

(2023) 02 RAJ CK 0105

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 1796 Of 2015

Akshay Surana

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 27-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Rajasthan Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Rules, 2011 — Rule 36, 37

Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1955 — Section 32

Citation : (2023) 02 RAJ CK 0105

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Vikas Balia, Hemant Kumar Ballani, Priyansh Arora, Himanshu Shrimali, Kailash Jangid, Mahesh Thanvi

Final Decision : Dismissed

Judgement

Kuldeep Mathur, J

By way of filing present writ petition, the petitioner has prayed for following reliefs:-

"It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed: -

A) By an appropriate writ order or direction, the respondents may kindly be directed to keep the post at roster point no.1 reserved for persons suffering from blindness/low vision in accordance with the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Rules 2011 for the subject Sanskrit in pursuance of the advertisement dated 12.01.2015 (Annex.4)

B) By an appropriate writ, order or direction, the respondents may kindly be directed to apply reservation applicable to persons with disabilities in accordance with Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Rules 2011 upon the selection process initiated vide advertisement dated 12.01.2015.

C) By an appropriate writ, order or direction, the respondents may kindly be directed to afford the petitioner appointment on the post of college lecturer subject Sanskrit, if he falls in merit with all consequential benefits.

D) Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

E) Writ petition filed by the petitioner may kindly be allowed with costs."

Briefly stated facts of the case are that the petitioner who suffers from physical disability of complete blindness, after putting hard labour, obtained requisite qualifications for appointment on the post of Lecturer (Sanskrit). The petitioner on the basis of the educational qualifications possessed by him, applied for appointment on the post of Lecturer (Sanskrit) pursuant to advertisement bearing No.07/2014-15 dated 12.01.2015, issued by the Rajasthan Public Service Commission, Ajmer. The case set up by the petitioner in the present writ petition is that as per Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 and Rule 36 and 37 of the Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011 (hereinafter referred to as 'Rules of 2011'), 3% reservation is to be extended to physically challenged persons. Out of which, 1% each shall be reserved for persons with (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy. The respondents however, did not reserve any post for the persons suffering from blindness or low vision out of the total 67 posts advertised on 12.01.2015 for recruitment against the post of Lecturer (Sanskrit). Though, one post each for BLA (Both legs, Arm) and OL (One Leg) was reserved. Being aggrieved by denial of reservation for category of persons belonging to blindness/low vision, the present writ petition has been filed.

Learned counsel for the petitioner vehemently submitted that a bare look at the advertisement dated 12.01.2015 shows that out of 67 available vacancies advertised for the post of Lecturer (Sanskrit), two posts were kept reserved for specially abled persons. According to learned counsel, both the seats were reserved for the candidates belonging to locomotor disability without disclosing as to why one seat for candidates suffering from blindness/low vision had not been reserved. According to learned counsel, denial of reservation for the category of blindness/low vision is in violation of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

1955 and Rule 36 and 37 of the Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011.

Learned counsel submitted that the cut-off marks for physically handicapped category is 118.40, whereas the petitioner had secured 140.47 marks which is much higher than the candidates, who have been placed in merit against two reserved posts for specially abled category. Learned counsel submitted that respondents have not followed the notification dated 21.07.2011 published in the Gazette of State Government on 26.07.2011 as per which roster point Nos.33 and 67 post shall be reserved for the persons falling in the disabled category.

Learned counsel submitted that no candidate suffering from disability of blindness/low vision has been appointed/working on the post of Lecturer (Sanskrit). Though, as per respondents, Shri Kaushal Kishore Gothwal and Shri Kuldeep Kumar Sehgal have been working in the said category, on the post of Lecturer (Sanskrit).

To buttress the assertion made by the respondents, learned counsel invited court's attention towards roster annexed along with additional affidavit dated 23.09.2022 and pointed out that though the name of Kaushal Kishore Gothwal appears at Serial No.154 of the roster register but in the corresponding column it reads, 'utilized by SC' thereby making it unclear as to whether the above-mentioned candidate was appointed against post reserved for SC category or under blindness/low vision category.

The Court's attention was then invited towards serial No.98 of the roster register to submit that though name of Kuldeep Kumar Sehgal was mentioned but in the corresponding utilisation column thereof, no details have been provided, raising doubts/suspicion regarding him being appointed against the category of persons belonging to blindness/low vision.

In the alternative, it was argued that if a candidate belonging to earmarked category mentioned in the advertisement dated 12.01.2015 is not available then the petitioner may be selected and provided appointment as per the rules in vogue.

On the strength of above submissions, it was thus prayed that the instant writ petition deserves to be allowed by this Court.

Per contra, learned counsel for the respondents submitted that in the State of Rajasthan, the provisions with regard to 3% reservation in favour of specially abled candidates is in force since the year 2000. According to learned counsel for the respondents, in the year 2000, roster points available to specially abled candidates were 33, 67 and 100.. In other words, the posts falling at roster points number 33, 67 and 100 were kept reserved for persons belonging to specially abled category. Learned counsel further submitted that in the year 2001, requisition for 32 posts of Lecturer (Sanskrit) was sent to RPSC but since no posts fell at above mentioned roster points, therefore, no reservation was

provided to specially abled candidates.

Learned counsel submitted that in the year 2009, against roster point No.33, one candidate namely, Kaushal Kishore Gothwal, suffering from blindness was selected as Lecturer (Sanskrit) against the post reserved for specially abled candidates (blindness/low vision) category pursuant to the orders passed by a co-ordinate Bench of this Court at Jaipur in S.B. C.W.P. No.3959/2001.

Learned counsel submitted that while S.B. C.W.P. No.3959/2001 was pending before co-ordinate Bench of this Court, 18 posts of Lecturer (Sanskrit) were advertised in the year 2006 and as per the roster points, 1 post for specially abled category was reserved while taking the total numbers of posts to be 50, i.e. 32 posts advertised in the year 2001 and 18 posts advertised in the year 2006. It was informed to the Court that the post belonging to specially abled category advertised in the year 2006 was filled up by one Kuldeep Kumar Sehgal, against the category of blindness/low vision category.

Learned counsel submitted that by the impugned advertisement No.07/2014-15 dated 12.01.2015, 67 posts of Lecturer (Sanskrit) were advertised and as per the prevalent roster points, one post each was reserved for the candidates belonging to BLA (Both legs and one Arm) and OL (One Leg) category.

It was vehemently submitted that at the time of issuance of the impugned advertisement dated 12.01.2015, 3% reservation in favour of specially abled persons was to be provided as per amended/changed roster points i.e. at Nos.1, 34, 67 and 101, in this way, 4 posts out of total 117 posts (32+18+67) were reserved for specially abled candidates.

Learned counsel implored the Court to dismiss the present writ petition as reservation to specially abled persons had been provided by the respondents by following the Rules of 2011 and roster points provided therein.

Having considered the submissions advanced at bar and perused the material available on record.

Relevant rules of Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Rules, 2011 are reproduced herein below for the sake of ready reference:-

"CHAPTER-V EMPLOYMENT

34. Employment of Persons with Disabilities.-For the purpose of employment, persons with disabilities in various categories of posts are to be identified under section 32 for reservation of persons with disabilities.

35. Eligibility. Notwithstanding anything contained in any rules or orders for the time being in force regulating the recruitment and conditions of service of persons appointed to the various services or posts in connection with the affairs of every establishment including the Government Department, Persons with Disabilities shall be eligible for appointment to the posts identified for them

under rule 36 of these rules provided they fulfill the qualifications laid down in the relevant recruitment or service rules for the posts and are functionally able to perform the duties of the posts of the said services.

36. Reservation for Persons with Disabilities.-In every establishment three percent of the vacancies shall be reserved for persons or class of Persons with Disabilities of which one percent each shall be reserved for persons suffering from:-

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) Locomotor disability or cerebral palsy.

In the posts identified for each disability by the Government of India under section 32 and such reservation shall be treated as horizontal reservation:

Provided that where the nomenclature of any post in the State Government is different from the post in Government of India or any post in the State Government does not exist in any department of the Government of India, the matter shall be referred to the Committee constituted under rule 38 for identification of the equivalent post in the State Government. The Committee shall identify the equivalent post on the basis of nature of job and responsibility of each post.

37. Maintenance of Rosters.-(1)All establishments shall maintain, separate 100 point reservation, roster registers for determining/effecting reservation for the disabled.

(2) Each register shall have cycle of 100 points and each cycle of 100 points shall be divided into three blocks, comprising the following points:

1st Block Point No. 1 to point No. 33

2nd Block-Point No. 34 to point No. 66

3rd Block Point No. 67 to point No. 100

(3) Points 1, 34 and 67 of the roster shall be earmarked and reserved for persons with disabilities-one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the points 1. 34 and 67 will be reserved keeping in view all relevant facts.

(4) All the vacancies shall be entered in the relevant roster register. "If the post falling at point no.1 is not identified for the disabled or the head of the establishment considers it desirable not to fill it up by a disabled person or it is not possible to fill up that post by the disabled for any other reason. one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of

keeping points 1. 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 by persons with disabilities.

(5) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 67 to 100. This means that if no vacancy can be reserved in a particular block, it shall be carried into the next block.

(6) After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.

(7) If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first shall vest in the head of the establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.”

At the outset, it may be noticed that this Court vide order dated 11.09.2019 directed respondents to clarify by filing an affidavit as to why both the posts reserved for specially abled category were offered to the candidates under the category of locomotive disability and why not to specific impairments. Two detailed affidavits along with relevant documents, sworn on 23.09.2022 and 09.01.2023 have been filed on behalf of the respondents indicating that four posts for specially abled category were kept reserved in order to provide 3 % reservation to them, out of total 117 posts.

In the affidavit, it has been mentioned that two persons suffering from disability of blindness/low vision are already working in the department, therefore, in the impugned advertisement dated 12.01.2015, reservation was provided to the candidates belonging to BLA (Both legs, Arm) and OL (One Leg) against posts reserved for specially abled persons.

In view of aforesaid affidavits and appended supporting documents, this Court has no hesitation in coming to a conclusion that for implementation of the Rules of 2011, four posts of Lecturer (Sanskrit) were reserved for specially abled candidates and out of these 4 posts, 2 posts had already been filled up by providing appointment to two candidates (Kaushal Kishore Gothwal and Kuldeep Kumar Sehgal) in the specific category of blindness/low vision.

It is also not in dispute that out of aforementioned 2 candidates, one candidate namely Kaushal Kishore Gothwal was provided appointment in the year 2008 against the advertisement issued in the year 2001-02, pursuant to the decision of co-ordinate Bench of this Court at Jaipur in S.B. C.W.P. No.3959/2001.

A plain reading of Rule 36 of the Rules of 2011 leaves no room of doubt that out of total vacancies available in every establishment, 3% of the vacancies shall be

reserved for persons or class of persons with disabilities, of which 1% each shall be reserved for persons suffering from:-

- (i) blindness or low vision;
- (ii) hearing impairment and;
- (iii) locomotor disability or cerebral palsy.

Rule 37 of the Rules of 2011 further mandates that a hundred point reservation roster register shall be maintained by all establishments for determining/ effecting reservation for disabled/specially abled and points 1, 34 and 67 of the roster shall be earmarked and reserved for persons with disabilities- 1 point for each of three categories of disabilities.

The Rules of 2011 also exempt any Government establishment from filling up vacancy by appointing persons suffering from benchmark disabilities having regard to the nature of work carried out in the establishment.

The Rules of 2011 have thus been framed with a view to providing persons suffering from different disabilities viz., blindness or low vision; hearing impairment; and locomotor disability or cerebral palsy with equal opportunity of being appointed in the establishment.

In view of the fact that two persons (Kaushal Kishore Gothwal and Kuldeep Kumar Sehgal) suffering from blindness/low vision are already working in the respondent-department out of the four available posts reserved for specially abled candidates, any direction by this Court to grant appointment to the petitioner on the post of Lecturer (Sanskrit) against seats reserved for other categories of specially abled viz. persons with locomotive disabilities would be detrimental to the object sought to be achieved by rules. The seats reserved for persons suffering from locomotor disability or cerebral palsy have rightly been advertised on 12.01.2015 by RPSC in conformity with roster register provided under Rule 37 of Rules of 2011. If the petitioner is extended appointment in the category of blindness/low vision against posts reserved for locomotive disability, especially when two persons have already been accorded appointment against such category, it will be clearly violative of Right to Equality enshrined in Article 14 and 16 of Constitution of India.

Suffice it to observe that keeping in view the provisions of Rule 37 of Rules of 2011, if a specially abled person meeting the requirements enumerated in advertisement dated 12.01.2015 is not available, then the case of the petitioner shall be considered objectively by the respondents.

In the result, the instant writ petition stands dismissed being devoid of merit.

All pending applications stand disposed of.

No order as to costs.