
(2010) 04 MP CK 0039
In the Madhya Pradesh High Court

Amar Das Bairagi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 38

Citation : (2010) 127 FLR 268 : (2010) ILR (MP) 1596 : (2010) 3 MPHT 449 : (2010) 2 MPJR 263 : (2010) 3 MPLJ 99

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.

The petitioner before this Court an Orthopedically handicapped person has filed this present writ petition being aggrieved by the action of the respondents in rejecting an application preferred by the petitioner for appointment to the post of peon on account of his being over age. The contention of the petitioner is that he is a member of other backward class category and is also more than 40% orthopedically handicap. He has further stated that he was appointed on the post of peon on daily wages on 16-12-1992 in the services of Town Improvement Trust and later on the Town Improvement Trust was abolished and his services were merged into Municipal Council, Guna and the petitioner became an employee of the Municipal Council Guna. The petitioner has further stated that the State of M.P. has issued a policy for discontinuing the services of daily wagers appointed after 31-12-1988 and the case of the petitioner was also reviewed by the Municipal Council, Guna in the light of the circular issued by the State of Madhya Pradesh, his services have been put to an end w.e.f. 13-1-2000 by the Municipal Council, Guna. The petitioner has further stated that an advertisement was issued as contained in Annexure P-7 by the Municipal Council, Guna inviting applications for the post of peon and the petitioner being a member of other

backward class category has also submitted an application and he was directed vide letter dated 14-6-2007 to appear before the Chief Municipal Officer along with all relevant documents. The petitioner as directed by the Chief Municipal Officer, appeared before the Chief Municipal Officer along with his caste certificate, his medical certificate, however, his candidature has turned down as he was more than 40 years of age. The petitioner's solitary grievance is that he is a physically disabled person and is entitled for age relaxation of 10 years by virtue of the policy decision of the State Government as contained in Annexure P-11, dated 7-7-1988, and therefore, the respondents in all fairness should have considered the candidature of the petitioner on merits. Learned Counsel for the petitioner has informed that this Court while issuing notice on 4-1-2007, has directed the respondents to permit the petitioner to participate in the process of selection and the Municipal Council has permitted the petitioner to participate in the process of selection, however, the result has not been declared by the Municipal Council in the light of the interim order passed by this Court on 4-1-2007. The petitioner has prayed for issuance of an appropriate writ, order or direction, directing the respondents to consider the case of the petitioner by granting age relaxation in the matter by virtue of the policy decision of the State Government.

A reply has been filed on behalf of the Municipal Council, Guna and the contention of the learned Counsel for the respondent No. 3 is that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is not applicable in case of Municipal Council, Guna and therefore, the question of granting age relaxation does not arise. It has also been stated that the upper age limit as provided in the advertisement was 40 years and as the petitioner was aged about 42 years he was held to be ineligible for the post of peon. The respondent has prayed for dismissal of the present writ petition.

Heard learned Counsel for the parties at length and perused the record.

In the present case, the petitioner before this Court is an orthopedically handicapped person having more than 40% disability. Not only this he belongs to other backward class category as notified by the State of Madhya Pradesh. The petitioner was initially appointed as a peon on daily wages basis on 16-12-1992 in the services of Town Improvement Trust and later on the Town Improvement Trust was abolished and his services were merged into Municipal Council, Guna and the petitioner became an employee of the Municipal Council, Guna. The petitioner has further stated that the State of M.P. has also issued a policy for discontinuing the services of daily wagers appointed after 31-12-1988 and the case of the petitioner was also reviewed by the Municipal Council, Guna in the light of the circular issued by the State of Madhya Pradesh and his services were put to an end w.e.f. 31-1-2000 by the Municipal Council, Guna. The respondent Municipal Council has subsequently issued an advertisement dated 27-6-2006 inviting application for the post of peon and one post was reserved for other backward category. The upper age limit as provided under the advertisement was

40 years. The petitioner he is an Orthopedically handicapped person having more than 40% disabled submitted his candidature keeping in view the age relaxation granted by the State Government by virtue of the policy decision as contained in Annexure P-11 by which 10 years age relaxation was granted w.e.f. 12-2-1981 vide order dated 9-10-2006 and the application for the petitioner was turned down as he was more than 40 years of age. In the present case, the respondent Municipal Council, Guna has discontinued the services of the petitioner w.e.f. 13-1-2000 based upon the executive instructions issued by the State of Madhya Pradesh and now for the purposes of granting age relaxation, the respondent Council is coming with a case that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is not applicable in case of Municipal Council, Guna. It is really very unfortunate that while terminating the employees executive instructions of the State Government are being looked into and for appointing the persons, the executive instructions issued by the State Government in respect of the handicapped persons are not being looked into by the Council. The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted in order to provide the following to the disabled persons:

Statement of Objects and Reasons:

The meeting to launch the Asian and Pacific Decade of the Disabled Persons, 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region held at Beijing on 1st to 5th December, 1992 adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provisions of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream.

section 38 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as under:

38. Scheme for ensuring employment of persons with disabilities.- (1) The

appropriate Governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may . provide for:

- (a) the training and welfare of persons with disabilities;
- (b) the relaxation of upper age limit;
- (c) regulating the employment;
- (d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
- (f) constituting the authority responsible for the administration of the scheme.

The State of Madhya Pradesh as per the provisions of section 38 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has issued the executive instructions and the same are very much applicable in case of Municipal Council, Guna also being a State and being a body owned and controlled by the State Government and once the State of Madhya Pradesh has issued the executive instructions to grant reservation to physically handicapped person and to grant relaxation by 10 years, the Municipal Council, Guna cannot take a contradictory stand which is in contravention with the statutory provisions of law and which is also in contravention with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is pertinent to note that the petitioner was granted permission by this Court to participate in the selection and petitioner has also participated in the process of selection. Resultantly, this Court is of the considered opinion that the petitioner was entitled for age relaxation of 10 years and therefore, the respondents are directed to consider the case of the petitioner and in case he is found fit for appointment, shall be conferred with the benefit of appointment on the post of peon in the services of Municipal Council, Guna. Resultantly, the present writ petition is allowed and disposed of with the following directions:

- (a) The impugned order dated 9-10-2006 rejecting the candidature of the petitioner and account of over age is hereby quashed.
- (b) The respondents are directed to grant 10 years age relaxation to the petitioner in the light of the policy decision of the State Government as contained in Annexure P-11 read with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (c) The respondents shall pass an appropriate order in case, the petitioner is found fit for appointment to the post of peon positively with a period of 60 days from the date of receipt of certified copy of this order.

With the aforesaid directions, the present writ petition is allowed and disposed of.
No order as to costs.

Certified copy as per rules.