

(2015) 05 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Writ Petition No. 49 of 2014

Anjana Joshi

APPELLANT

Vs

The Rajasthan Public Service Commission and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33

Citation : (2015) 05 RAJ CK 0047

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Vikram Singh and Vishwas Saini, for the Appellant; Shantanu Kumawat, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.

1. A challenge has been made to the order dated 13.12.2013 whereby the Rajasthan Public Service Commission (hereinafter "the RPSC") has rejected the candidature of the petitioner (a physically handicapped person) on the post of a Nursing Tutor reserved for a physically handicapped person. The rejection was made in view of the fact that the petitioner suffering from Post Polio Paralysis of left upper limb with contractive of left wrist joint alongwith Paralysis of the left leg, was unsuitable for the post in issue which was identified for a person with only a disability in one leg.

2. The petitioner completed her Bachelor of Science (Nursing) four year course in the year 2011 from the Rajasthan University of Health and Sciences. She then worked as a Nursing Tutor at the Institute of School of Nursing Shri Kalyan Arogya Sadan (hereinafter "SKAS"), T.B. Hospital and Medical Research Center, Bajaj Gram, Sanwli District Sikar effective 1.10.2012. In response to an advertisement issued by the RPSC inviting applications for appointment to the post of Nursing Tutor, the petitioner applied under the quota for physically

handicapped under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter "the Act 1995"). She was issued an admission card for the screening test which she successfully cleared. She was thereafter called for the interview where her documents relevant to her appointment to the post of Nursing Tutor including those pertaining to her disability were verified by the respondents. The petitioner was then directed to produce fresh and more current disability certificate by 17.10.2013. Thereon the petitioner approached the Medical Board, obtained a fresh medical certificate on 24.10.2013 and submitted her disability certificate to the respondents.

3. It has been submitted that while the petitioner was awaiting her appointment on the post of Nursing Tutor against the seat reserved for the physically handicapped, vide order dated 13.12.2013 her candidature was rejected stating that as she also suffered from Post Polio Paralysis of left upper limb with a contractive left wrist joint aside of disability in one leg, and was thus not entitled to be appointed on the post in the context of the job profile of the said post. It was stated that the post of Nursing Tutor had been identified for reservation under the Act of 1995, only for those suffering from disability of one leg alone and not for those with upper limb disability.

4. Hence this writ petition.

5. Counsel for the petitioner has submitted that the order dated 13.12.2013 rejecting the petitioner's candidature for appointment to the post of Nursing Tutor against the vacancy reserved for physically handicapped is wholly unreasonable and arbitrary. It has been submitted that the petitioner has been discharging duty of a Nursing Tutor without any deficiency with SKAS since 1.10.2012 and hence to hold that as she was suffering also from an upper arm disability, she would be unable to discharge her duties as a Nursing Tutor with the government hospitals is absolutely unwarranted and arbitrary. It has been submitted that the petitioner had in the course of the interview given demonstration on the black-board successfully, yet her candidature has been rejected on 13.12.2013 on the false and untenable ground of her being unable to efficiently discharge duties as a Nursing Tutor.

6. Counsel for the respondents however submitted that the candidature of the petitioner for appointment on the post of Nursing Tutor reserved for physically handicapped person has been rejected as she does not belong to a category of disabled for whom the post in issue was identified. It has been submitted that the writ petition has been filed by the petitioner without challenging the identification of the post with reference to the acceptable physical disability suffered by a person or the condition of the advertisement wherein a specific condition had been inserted that in the physically handicapped category, those with Locomotor Disability and Cerebral Palsy (L.D. and C.P.) (O.L.) - only one leg affected (Right or Left) would be entitled for consideration on the said post in the reserved category. It has been submitted that the petitioner was informed vide letter dated 13.12.2013 that taking into consideration the duties of Nursing Tutor

only those suffering from physically disability in one leg were to be considered eligible for the post in the reserved category and since the petitioner had aside of disability in one leg, also had a disability in a left upper limb, she was not found suitable for the post of Nursing Tutor. It has been submitted that in the application submitted by the petitioner for consideration for appointment as a Nursing Tutor under the physically handicapped category, she had only disclosed a L.D.C.P. disorder without mentioning the extent of her disability or that she also had an upper limb disability. This fact came to the notice of the respondent RPSC during the medical screening. The petitioner was thus medically unfit for the post of Nursing Tutor even with the relaxed standard of medical fitness for those applying for the said job under the category of physically handicapped. The petitioner's disability of the left upper limb was a clear obstruction in discharging the duties of Nursing Tutor leading to her rejection.

7. Heard. Considered.

8. The right to an appointment on a post reserved for physically handicapped person under the Act of 1995 is not an absolute right. The right accrues only in respect of a post identified with acceptable disability by the employer in terms of section 33 of the Act of 1995. From the record of the writ petition it appears that the post of Nursing Tutor has indeed been identified for appointment of a person suffering with one leg disability. The identification of the post for appointment of a physically handicapped person is conditional and does not entail acceptance of all physically handicapped irrespective of their disability. Only those with acceptable disability notified, are entitled to avail the reservation for physically handicapped on the post of Nursing Tutor i.e. those suffering one leg disability. The petitioner suffers disability of one leg but also disability of the left upper limb with contractive left wrist joint. And consequently on consideration of matter by the respondents it was found that the petitioner was not entitled for appointment to the post of Nursing Tutor on post reserved for the physically handicapped.

9. The issue of the post identified for appointment of a person suffering from disability and the extent of disability acceptable for a post is a matter for the experts. Expert opinion has been obtained in the context of the duties of a Nursing Tutor with regard to acceptable disability. It has been determined by the experts that for efficient discharge of duties as Nursing Tutor, one leg disability alone, not more, would be acceptable even for those availing reservation under the Act of 1995. Consequently the petitioner did not fall within the category of physically handicapped person entitled to be considered for the identified post of Nursing Tutor. A Nursing Tutor requires both hands for demonstration for effectively taking classes without compromising teaching standard. The post has therefore not been identified for those suffering from upper limb disability. A clarification was also sought by RPSC from the State Government with regard to certificate of physically handicapped persons seeking consideration to the post of Nursing Tutor. Vide letter dated 5.12.2013 RPSC was informed that the physical disability certificate of the petitioner was not as per the requirement of the post

identified. There is nothing on record to over-rule the decision of the experts in the case at hand or for holding the rejection of the petitioner's candidature arbitrary or unreasonable.

10. I therefore find no force in the petition. Accordingly dismissed.

11. In view of the writ petition being dismissed the application for impleadment by the successful candidate in the physically handicapped category for post of Nursing Tutor does not survive and is rendered infructuous. Accordingly dismissed.