
(2019) 07 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16641 Of 2019 (O&M)

Aryan Raj

APPELLANT

Vs

Chandigarh Administration And Others

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Rights Of Persons with Disabilities Act, 2016 — Section 32,34

Citation : (2019) 07 P&H CK 0173

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Veena Kumari, Suraj Preet Singh Kang

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

CM-10215-CWP-2019

1. This is an application for exemption from filing certified copies of the Annexure R-5/1 and R-5/2.
2. Exemption sought for is granted and the application stands disposed of. CM-10216-CWP-2019
3. This is an application for impleading the applicant as respondent No.5.
4. The application is allowed as prayed for and the applicant is impleaded as respondent No.5. Amended memo of parties is taken on record.
5. The petitioner is intellectually challenged to the extent of 50%. His Intelligence Quotient is 66 as per Disability Certificate dated 14.7.2017, issued by the Government Rehabilitation Institute for Intellectual Disabilities, Sector 31, Chandigarh. He has passed his Class 10th examination in October, 2018 from the National Institute of Open Schooling, securing 316 marks out of a total of 500 marks. He has also participated in various sports events at the National and

State level, the details of which have been given in his Bio-data annexed as Annexure P-3 with the writ petition. He also has an artistic bent of mind and has participated in a number of art exhibitions and competitions, as detailed in the Bio-data (Annexure P-3). Merit certificates in respect of his achievements in Sports and Art and Craft, have been collectively annexed as Annexure P-4.

6. The respondent-College runs a diploma course in Fine Art for physically/mentally challenged students. The nomenclature of the said course is Diploma in Fine Art for Divyang (for short 'DFAD'). The eligibility criteria thereof is passing of 10th class or equivalent examination recognized by the Syndicate of the Panjab University with a minimum of 40% marks (in case of SC/ST 35% marks), calculating the best of five subjects and obtaining 40% aggregate marks (in case of SC/ST 35% marks), in an Aptitude Test comprising object Drawing and composition Painting. A total of four seats have been sanctioned for the said course, one each in disciplines of Applied Art, Painting, Graphics and Sculpture. The course has a duration of four years. Intellectually/mentally challenged students are eligible only in the disciplines of Painting and Applied Art, subject to them producing a certificate from the competent authority that he/she is fit to pursue the course. Such students study the practical subject prescribed for Fine Arts course, but are exempted from the study of the theory subjects.

7. The petitioner applied for the aforementioned course alongwith necessary documents and his application was accepted. Thereafter, he filed the present writ petition challenging certain provisions of the prospectus issued by the respondent-College viz. (a) non-bifurcation of seats between physically challenged and mentally challenged students and (b) Provision of Aptitude Test for the mentally challenged students also. A further prayer has been made for constitution of a Special Board comprising experts in the field of intellectual disability to evolve a method for assessing fitness of an intellectually challenged student while applying for DFAD course instead of the provision of an Aptitude Test.

8. A detailed written statement has been filed on behalf of the Chandigarh Administration and the respondent-College, wherein the maintainability of the present petition has been objected to. That apart, it is submitted that the stipulations contained in the prospectus were got approved from the Panjab University before inclusion thereof in the prospectus. Thus, the stand is that the eligibility conditions had been laid down after due consideration by the experts in the field and keeping in view the statutory provisions and therefore, no interference is called for.

9. After issuance of notice of motion, an interim direction was issued reserving one seat for the petitioner in the discipline of Painting and liberty was granted to him to take part in the Aptitude Test. The result dated 10.7.2019 of the Aptitude Test is Annexure R-5/1 on record, according to which, the petitioner secured 37.3. % marks and was declared failed.

10. In support of the case of the petitioner, learned counsel for the petitioner has placed reliance upon sections 32 and 34 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act'). A judgment dated 12.9.2012 passed by a Division Bench of the Delhi High Court in W.P (C) No.4853 of 2012 titled as 'Anamol Bhandari (Minor) through his Father/Natural Guardian Vs. Delhi Technological University' has been relied upon in support of the argument that a mentally challenged person is at par with a Scheduled Caste/Scheduled Tribe person and thus, a minimum of 35% marks should be the requirement for clearing the Aptitude Test.

11. Sections 32 and 34 of the Act, are reproduced below for ready reference:-

'32. Reservation in higher educational institutions: (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.'

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'34. Reservation: (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:-

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.'

12. The first argument of learned counsel for the petitioner is that there must be a bifurcation of the total available seats between physically challenged students and mentally/intellectually challenged students. For this purpose, she has replaced reliance upon sections 32 and 34 of the Act reproduced hereinabove. Section 32 of the Act, provides for not less than 5% reservation for persons with benchmark disability with an upper age relaxation of five years for admission in institutions of higher education. Section 34 of the Act, provides for not less than 4% reservation in vacancies in all Government establishments and further provides for 1% reservation for persons with the disability of blindness, deafness and locomotor disability etc. It appears that the argument of learned counsel is based upon provision of 1% reservation only for those suffering from intellectual or allied disability or multiple disabilities. However, in the fact situation prevailing in the present case, we are unable to accept the submission of the learned counsel for the petitioner.

Intellectually/mentally challenged students can apply only for discipline of Painting and Applied Art. Each of these disciplines has one seat only. Had there been more than one seat in these disciplines, the argument of learned counsel for the petitioner could have been examined. Reserving the lone seat available for a student suffering from intellectual/mental disability would deprive students with physical disabilities from applying for the same, which would be detrimental to their interests. Persons with disabilities are sought to be given some preference by the Act so that the right to equality does not remain illusory for them, but all persons with disability must be treated equally and no benefit can be given to a class of disabled persons at the expense of another class.

13. The next argument is that keeping in view the limitation of an intellectually/mentally challenged student he/she should be exempted from taking Aptitude Test. If at all, the Aptitude Test is to be taken, minimum pass marks should be reduced to 35% as in the case of SC/ST students because an intellectually/

mentally challenged student is at least equally deprived as a SC/ST student, if not more and for this purpose reliance has been placed upon the case of Anamol Bhandari (supra).

We are afraid that this argument also deserves to be rejected. It may be noted that the DFAD course has specifically been crafted for students with disabilities. Keeping in view their limitations, the eligibility conditions have been prescribed. The same have been prescribed by experts in the field and we are not in a position to direct the authorities to adopt a different mode for making admissions. Such matters are best left to experts as the Courts lack the expertise to opine thereupon. The prescription of 35% marks as the minimum required for clearing the Aptitude Test, also cannot be done by us for the same reason. All candidates for the DFAD course suffer from disability and they are being treated equally. A further concession has been granted to SC/ST candidates, but this does not mean that persons with disability are being placed at a disadvantage. This was the situation in the case of Anamol Bhandari (supra) and thus, the Division Bench of the Delhi High Court held that persons with disability should be treated at par with SC/ST candidates. In the said case, SC/ST candidates had been given 10% relaxation in the minimum marks required for admission as against 5% relaxation to people with disability.

14. For the aforementioned reasons, we have no option, but to dismiss this writ petition.

15. We can however, not lose sight of the fact that intellectually/mentally challenged persons have certain limitations, which are not there in physically challenged persons. The subject experts would thus, be well advised to examine the feasibility of creating a course which caters to the specific needs of such persons. They may also examine increasing the number of seats in the discipline of Painting and Applied Art with a view to accommodating such students.