

(2015) 04 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 685 of 2015

Ashok Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

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

Citation : (2015) 04 PAT CK 0032

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Raj Nandan Prasad Singh and Amit Anand, for the Appellant; Sanjeet Kumar Tiwari, AC to AAG 12, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.

1. Petitioner became an applicant to the post of Principal as well as Vice Principal in the Industrial Training Institutes located in the State of Bihar. The advertisement is Annexure- 1 to the writ application. When the petitioner did not hear from the respondents or got a call for interview, he decided to file the present writ application raising a grievance that he despite being physically handicapped to the extent of 50%, he has not been extended the benefit of reservation, which is available to this category of persons in terms of provision of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection and Rights and Full Participation) Act, 1995.

2. The respondent BPSC was called upon including the State to explain their stand with regard to the grievance of the petitioner. The State has taken a stand that the advertisement was issued by the BPSC. The terms and conditions of the requirement as well as reservation have been provided for in the advertisement itself and the rules of reservation govern such case. It is a cryptic counter affidavit no doubt because the burden has been shifted upon the Bihar Public

Service Commission to explain the circumstances under which the petitioner did not get a call for participation in the interview.

3. Counter affidavit of BPSC is a detailed counter affidavit. They have taken a stand that reservation for physically disabled candidates is in the advertisement itself but such reservation is not absolute. They are guided by certain rules and circulars, which have been issued by the State themselves taking into consideration the provision of the Act as well as communications received from the Government of India while providing benefit of reservation to physically handicapped. They have annexed Annexure-D, which is a policy issued under the authority of Department of Personnel and Administrative Reforms, Government of Bihar and is dated 5.1.2007. Benefit of reservation for physically handicapped is granted on the basis of the parameters laid down therein.

4. The Counsel for BPSC further explains that reservation is provided in a terms with roster clearance. In addition to that, since the reservation is horizontal reservation for physically handicapped he has to compete amongst his class where he will get benefit of reservation. Petitioner belongs to the SC category. The last of the candidates, who was called in the interview, had requisite marks, which is 76.55% and 75.66% respectively with regard to advertisement No. 13 of 2014 and 14 of 2014. Petitioner's marks is only 53.52%.

5. In view of the above, it is not a deliberate or intentional discrimination practiced to deny benefit to the petitioner despite being physically handicapped. The right of the petitioner is governed by set of rules and guidelines. So long as those rules are not held to be violative of the statutes and the selection has been carried out in terms of the said guidelines, especially Annexure- D and the advertisement, no interference is warranted. What the petitioner is looking for is a special reservation by virtue of the fact that he is physically disabled, that interpretation cannot be extended in view of Annexure-D, which is in operation since 5.1.2007.

6. Writ application is dismissed. Petitioner has no claim over and above what has been indicated in the previous part of the order.