
(2001) 01 GAU CK 0002
In the Gauhati High Court
Case No : WP (C) No. 1065 of 2000

Dilip Baruah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 256, 356, 38, 38(1)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 32, 33

Citation : (2001) 1 GLT 223

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : Mr. S. Sarma and Mr. A.N. Choudhury, for the Appellant; Mr. B. Goswami, for the Respondent

Final Decision : Allowed

Judgement

ftab H. Saikia, J.—This is an application under Article 226 of the Constitution of India praying for a direction to the respondents to consider the case of the petitioner to the post of Surveillance Worker in the establishment of respondent No.4. The only ground for seeking such appointment in this writ petition is that the petitioner is a handicapped person.

2. The case of the petitioner is that he is a handicapped person and he has been suffering from traumatic paralysis of the left hand and as such he is a handicapped person. His percentage of disablement is 60% as evident from the certificate issued by the Jt. Director of Health Services, Sonitpur at Tezpur mentioned in Annexure-A to the Writ petition. Being situated, with the said disablement, the petitioner has approached the respondents for his appointment in any Grade III or Grade IV post particularly, as Surveillance Worker and the District Malaria Officer, Sonitpur at Tezpur vide his communication dated 26.2.1988 appointed the petitioner as Surveillance Worker in his establishment for a period of 30 days. The services of the petitioner was extended after the

initial period of one month for any other 15 days. Till the year 1996 the services of the petitioner was availed by the department by providing extension time and again. A summary of the petitioner's orders of appointments and extensions are quoted below :

Accordingly he has worked till 25.4.1996 and thereafter, the petitioner was not allowed to continue in the said capacity.

3. The petitioner approached the authority by filing various representations but those are not responded by the respondents authority. Hence, this writ petition.

4. I have heard Mr. S. Sarma, learned counsel appearing on behalf of the petitioner as well as Mr. B. Goswami, learned Govt. Advocate representing the respondents.

5. Despite the service, no affidavit-in-opposition has been filed on behalf of the State-respondents. But at the time of hearing of the matter, Mr. Goswami, learned Govt. Counsel has furnished certain instructions as directed by this Court.

6. Mr. Sarma, learned counsel for the petitioner states that the petitioner's case for extension for appointment has not been considered by the respondents in spite of several representations preferred by the petitioner. He has urged that the authority ought to have considered the case of the petitioner as per the mandate of the Constitution as well as the statutory provisions of the enactment namely, the persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the "Act". The Parliament passed the said Act in the year 1995. The said Act was passed to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region. The preamble of the Act is as under;-

"Whereas the Meeting to launch the Asian and Pacific Decade of Disabled persons 1993-2000 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the proclamation on the full participation and Equality of people with Disabilities in the Asian and Pacific Region.

AND WHEREAS India is a signatory to the said proclamation.

AND WHEREAS it is considered necessary to implement the proclamation aforesaid,"

The statement of objects and reasons of the said Act is quoted below:-

" 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 adopting the proclamation on the full participation and Equality of People with Disabilities in the Asian and 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 strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- (vi) to make special provision for the integration of persons with disabilities into the social mainstream."

A careful reading of the objects and reasons clearly shows that the basic purpose of the Act is to improve the socio-economic condition of the persons removing any discrimination in protection of rights provisions of medical care, education, training employment and rehabilitation and for equal opportunities for adequate means of livelihood and employment.

7. As mentioned the preamble of the Act itself India is a signatory of the aforesaid covenant and has an effect of the said proclamation signed by India on the persons with Disabilities. The Legislature has enacted the Act to promote the social welfare of the people in order to render social justice as guaranteed by Constitution of India.

8. Before i go to decide the contention raised by the learned counsel for the parties, for better appreciation it will be necessary to have a look at the relevant provisions of the Constitution as well as the Act, those are quoted below :-

Article 51 of the Constitution one of the directive principles of the said policy reads as below:-

"Art.51. Promotion of International peace:- This Article embodies the object of India in the international sphere. It does not lay down that international treaties or agreements entered into by India shall have the force of municipal law without appropriate legislation."

Articles 38 and n 41 of the Constitution of India are as follows:-

"38(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the Institution of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing indifferent

areas or engaged in different vacations."

41. The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work to education and to public assistance in cases of employment, old age, sickness and disablement, and in other cases of undeserved want."

On the other hand, Article 256 of the Constitution enumerated with executive powers, which are as follows:-

"256. The executive power of every State be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive of the Union shall extend to the giving of such direction to a State as may appear to the Government of India to be necessary for that purpose."

9. Now, we would like to refer those provisions of the Act specially relates to the instant case in hand.

10. The appropriate Govt. mentioned in this Act is also defined u/s 2(a) , which are as follows :-

"2(a) appropriate Govt. means:-

(i) in relation to the Central Govt. or any establishment wholly or substantially financed by the Government, or a Cantonment Board constituted under the Cantonment Act, 1924 the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by the Government, or any local authority, other than a Cantonment Board, the State Government;

(iii) in respect of the Central Co-ordination Committee" and the Central Executive Committee, the Central Government;

(iv) in respect of the State Co-ordination Committee and the State Executive Committee the State Government.

Section 2(i)(v) and (o) of the Act provide that locomotor disability means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy; whereas section 2(t) provides "persons with disability" means a person suffering from not less than forty per cent of an disability as certified by a Medical authority.

11. Chapter VI of the Act deals with employment and details the provisions for reservation in every establishment relating to the employment for the persons of disability. The provisions of sections 32 and 33 falling under the Chapter, reads as follows:-

"32, Identification of posts which can be reserved for persons with disabilities - Appropriate Government shall -

(a) Identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and update the list taking into consideration the developments in technology.

"33. Reservation of posts - Every appropriate Govt. shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent, each shall be reserved for persons suffering from -

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy in the post identified for each disability."

Provided that the appropriate Govt. may, having regard to the type of work carried on in any department or establishment, by notification, subject to such condition, If any, as may be specified in such notification, exempt any establishment from the provision of this section."

12. A conjoint reading of those provisions manifestly speaks that the Constitution as well as the Statute cast an obligation and duty upon the State to provide for employment to the handicapped persons by reservation of posts in every establishment to the extent of three per cent of the total vacancy and the State cannot be permitted to escape such obligation without valid or cogent reasons.

13. Section 33 of the act has classified three categories of persons who are entitled for such reservation :-

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy.

14. In the case in hand, it relates to the third category of persons.

15. In our country the picture and plight of the persons with disability is lamentable and gloomy. Handicapped persons generally suffers from inequality. There is a general feeling that discriminatory treatment has been treated out to them. The attitude of the society towards disabled persons is one of sympathy and pity affecting their human dignity. They are not considered as capable of leading an independent and protective lives. Keeping this aspect in view the Legislature make the new approach for the integration of persons with disabilities into the social mainstream. This new act has ushers in fresh hope and aspiration in the mind of the handicapped person indicating that their expectation can be well taken care of.

16. Now the next question as regards to the implementation of the Act in the State of Assam. In this connection a reference was made to a decision of this Court in *Binita Senapati Vs. State of Assam and Others*, wherein a letter written by the Commissioner & Secretary to the Govt. of Assam, Social Welfare Department, Dispur was quoted. That letter is quoted below :-

"Kindly refers to this Department letters No. SWD 212/94/Pt/5 dated 8th October, 1996 and subsequent letter dated 6th November, 1996 regarding 3% reservation for physically disabled persons maintenance of records thereof.

It is impressed upon you that "the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" of Government of India has already been implemented with effect from 7.2.1996. It has become obligatory on the part of each employer to maintain records of 3% reservation for the disabled as per Section 33 of the Act. It is also obligatory on the part of the Appointing Authorities to make appointment as per the Act.

I may, therefore, request you to kindly confirm whether such records are maintained and 3% reservation has been implemented. The number of persons appointed under this category, may also be intimated to this Department.

With regards."

17. This would clearly show that the Govt. of Assam has already implemented the said enactment w.e.f. 7.2.1996.

18. In the instant case, Mr. Sharma, learned counsel submits that there has been clear infringement of right vested upon the petitioner by the Constitution and Statutory provisions and the petitioner has been denied of his legitimate claim for appointment under the reservation quota as handicapped person. The petitioner is entitled for his appointment under the reserved quota of handicapped persons.

19. Mr. B. Goswami, learned State counsel submits that in compliance of the Mandate of the Constitution the Government of Assam has already taken a serious steps for implementation of the said Act and the scheme has already been formulated. Elaborating his submission Mr. Goswami has furnished a list of handicapped persons sponsored for the appointment but it appears that the said list only confined to the person with the disability of blindness. Nothing has been provided as regards to the reservation/ sponsoring of the persons who are disabled by locomotor disability.

20. It is very unfortunate that the petitioner being a handicapped person has not been accommodated in the reserved quota as per the Statute though the services of the petitioner has been availed by the authority from time to time since 1988 against the temporary vacancy. More particularly, after the Implementation of the Act, the petitioner has to run from pillar to post for his appointment in the said capacity. A reading of the Annexure-C, a communication made by the District Malaria Officer to the Asstt. Director of Employment, District

Employment Exchange, Tezpur clearly shows that on a query made to this effect, no roster has been maintained in respect of physically handicapped persons for locomotor disability when there is work force of 198 numbers. Attention has also been drawn to footnote made on the body of the Representation dated 27.1.1999 mentioned at Annexure-D to the Writ petition by the Jt. Director of Health Services, Sonitpur to the effect that the petitioner is experienced and most sincere in his duties and requested to consider his case. The learned counsel has strenuously argued that considering his experience and sincerity also as indicated above, the petitioner ought to have been appointed in any existing vacancy of Grade III or Grade IV post as a reserved quota.

21. Considering the facts and circumstances of the case vis-a-vis, the relevant provisions of law and on perusal of the material on records in the writ petition and the documents submitted by the Govt. counsel in this regard. I am of the considered view that the petitioner has made out a fit case for consideration of this case for appointment in any existing vacancy of Grade III or Grade IV post in terms of Constitution and Statutory provisions. Accordingly, I direct the respondents to consider the case of the petitioner for appointment in reserved quota of handicapped persons (loco motor disability) with the similarly situated persons taking into account his experience as other factors. This shall be done within a period of 2 (two) months from the date of receipt of the order. It is made clear that the petitioner shall furnish a certified copy of this order to the concerned authority and thereafter the authority shall act accordingly within the said stipulated period.

22. In the result, this Writ petition is allowed. No order as to costs.