

(1997) 12 AHC CK 0110
In the Allahabad High Court
Case No : C.M.W.P. No. 41151 of 1997

Dr. Khalid Bin Yusuf Khan

APPELLANT

Vs

Aligarh Muslim University and another

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 39

Citation : (1998) 1 AWC 722

Hon'ble Judges : R.K. Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Raj Kumar Jain, for the Appellant;

Final Decision : Disposed Of

Judgement

M. Katju and R.K. Singh, JJ.—Heard learned counsel for the parties.

2. The petitioner is a confirmed Lecturer in Sanskrit in Aligarh Muslim University, Aligarh. By means of this petition, he has prayed that three per cent reservation should be made for the post of Sanskrit Reader in favour of a physically handicapped person. The petitioner claims to be a physically handicapped person and he has relied on Section 39 of the provisions of Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 39 of the Act reads as under :

"39. All Government educational Institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities."

3. In our opinion, Section 39 has no application because it deals with reservations for seats and not for posts. In this connection, we may refer to Section 32 of the same Act which uses the word posts. Posts are meant for the teachers, whereas seats are meant for the students. Hence, Section 39 has no relevance to this case but the relevant provision is Section 33 of the Act which

states that the appropriate Government can fix the percentage of vacancies not less than three per cent for the persons with disabilities.

4. In our opinion, unless the appropriate Government fixes the percentage of vacancies by a notification, the petitioner cannot get any benefit of being a physically handicapped. The words "appropriate Government" have not defined to mean any establishment wholly or substantially financed by the Central Government. Aligarh Muslim University is wholly or substantially financed by the Central Government, and hence the appropriate Government in relation to the Aligarh Muslim University will be the Central Government.

5. In our opinion, therefore, the remedy of the petitioner is to approach the Central Government u/s 33 of the Act with the request to issue a notification fixing the percentage of vacancies for such disabled persons. The petitioner may also request the appropriate Government u/s 32 to identify the posts which can be reserved for disabled persons. If such request is made by the petitioner, the same shall be disposed of by the Central Government/appropriate authority as speedy as possible.

6. With these observations, this petition is finally disposed of.