

(2021) 07 SHI CK 0210
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2741 Of 2021

Geeta Ram

APPELLANT

Vs

State Of Himachal And Others

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Rights Of Persons With Disabilities Act, 2016 — Section 2(q), 33, 34

Citation : (2021) 07 SHI CK 0210

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Jiya Lal Bhardwaj, Ashok Sharma, Shiv Pal Manhans, Vikas Rathore, Hemanshu Mishra, J.S. Guleria, Bhupinder Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Petitioner has filed instant petition seeking following substantive reliefs:-

a) That a writ in the nature of certiorari may kindly be issued declaring disabled persons having more than 60% disability of Deaf and Hard of Hearing

ineligible for appointment to the posts of Trained Graduate Teacher (Arts) in pursuance to the notification dated 19th September, 2020, published in

Rajpatra Himachal Pradesh on 21st October, 2020, as ultra-virus, inoperative and non-est;

b) That a writ in the nature of mandamus may kindly be issued directing respondents No.1 to 3 to offer the appointment to the petitioner on the post of

Trained Graduate Teacher (Arts) strictly as per his merit, w.e.f. 19.4.2021, with all consequential benefits, such as Seniority, Pay along with arrears to

be paid by respondents No.1 to 3 @ 9% per annum, from the date same fell due

till its realization and further the petitioner be considered senior to respondent No.4;

2. Respondent No.2 on 13.10.2020 forwarded advertisement notice to the Director Public Relations, Government of Himachal Pradesh for publication in Newspapers, whereby posts of Trained Graduate Teachers (Arts, non-medical and medical) were proposed to be filled from eligible candidates of disabled persons category. Total 84 posts of Trained Graduate Teachers (Arts) (TGT Arts for brevity) were sought to be filled, which included total

25 posts for persons suffering from hearing impairment (10 posts merit wise and 15 posts batch wise).

3. As per advertisement notice dated 13.10.2020, the eligible candidates could find their names on the website of Director of Elementary Education,

Himachal Pradesh and could apply for rectification of any incorrect information pertaining to them on or before 20.10.2020. It was also prescribed that

in case any eligible candidate did not find his/her name on official website of Director of Elementary Education, Himachal Pradesh, he could apply on plain paper till 20.10.2020.

4. On 21.10.2020 a Notification came to be published in Rajpatra Himachal Pradesh purportedly under Section 34 of the Rights of Persons with

Disabilities Act, 2016 (hereinafter referred to as Act) whereby the Government of Himachal Pradesh was pleased to identify posts of 4% reservation

to disabled persons in the Elementary Education Department. At Sr. No.1 of this notification, upper limit of 60% disability was prescribed for deaf and

hard of hearing candidates for the post of TGT (Arts) meaning thereby that a candidate having more than 60% disability in said category was not eligible.

5. Petitioner is having permanent disability to the extent of 70% on account of hearing impairment. He possessed all prescribed qualifications for post

of TGT (Arts). Name of the petitioner was made available on the aforesaid official website. He received letter dated 9.11.2020 requiring him to

appear for counseling on 5.12.2020 at 11.00 A.M in the office of the Deputy Director Elementary Education, Shimla. Petitioner participated in

counseling which eventually took place on 7.12.2020.

6. Petitioner remained unsuccessful in final selection on the ground that he had 70% disability of hearing impairment and hence was ineligible.

Aggrieved against his rejection on the aforesaid grounds, the petitioner has assailed the same by way of instant petition, mainly on the following grounds-:

(a) On the date of advertisement i.e. 13.10.2020, there was no upper limit of disability prescribed for being eligible to the post of TGT (Arts) and the upper limit so prescribed vide Notification published on 21.10.2020 could not be applied retrospectively.

(b) The prescription of upper limit of disability at 60% was illegal, arbitrary and irrational, being not commensurate to the requirement for the post, especially when no such prescription was there for the post of Drawing, Yoga and Music Teachers besides Junior Basic Teachers and Post Graduate Teachers.

(c) Petitioner, to the knowledge of respondent(s), was having disability to the extent of 70% with respect to his hearing impairment, still he was allowed to participate in the selection process and thereby creating estoppel against the respondent.

7. Respondents No.1 to 3 were put to notice, who filed their joint reply, contending inter alia that the Notification under Section 34 of the Act published in the Rajpatra on 21.10.2020 has to be reckoned to have come into force on 19.9.2020. The respondents have not disputed the legal position that recruitment process is to be governed by the Rules prevalent at the time of advertisement of the posts. It is nowhere disputed by the respondents that the date of advertisement or the last date for submission of application was not as alleged by the petitioner.

8. We have heard learned counsel for the petitioner as well learned Advocate General for respondents No.1 to 3 and have carefully gone through the documents placed on file. We, however, did not feel necessary to issue notice to respondent No.4 against whom no substantive relief was claimed.

9. It is no more res-integra that the recruitment process is to be governed by the Rules prevalent at the time of advertisement. Respondents No. 1 to 3 themselves have fairly admitted the legal position in this regard and have relied upon the full Bench judgment of this Court in CWP 8523 of 2011 titled *Berojgar Shastri Sangh Welfare Society Versus State of H.P. and others*, decided on 12.11.2013.

10. In the present case, the advertisement is dated 13.10.2020 or in any case of

a date prior to 20.10.2020, as the last date for submission of application and rectification of incorrect information on the website was 20.10.2020, therefore, the Rules prevalent at the time of issuance of advertisement shall prevail. Admittedly the Notification under Section 34 of the Act was published in Rajpatra Himachal Pradesh on 21.10.2020, which was later in time to the issuance of advertisement. The upper limit so prescribed at 60% disability for deaf and hard of hearing candidates prescribed through the said Notification cannot be applied retrospectively to the case of petitioner and similarly situated persons. The contention of the respondents that the Notification dated 19.9.2020, though published on 21.10.2020, has come into effect from 19.9.2020 itself, is not sustainable.

â??Section 2(q) of the Act defines Notification as under:-

(q) â??notificationâ? means a notification published in the official gazette and the expression â??notifyâ? or â??notifiedâ? shall be construed accordinglyâ?.

Since the notification in question was issued under Section 34 of the Act, it mandatorily required publication in official gazette for its applicability.

11. A Coordinate Bench of this Court in CWP No.3634 of 2019 titled as Prabhu Kumar Versus State of Himachal Pradesh and others decided on

29.9.2020, had occasion to adjudicate the question whether the prescription of upper limit of disability percentage for determining the eligibility of

petitioner disabled candidates under the provision of Act was permissible?. Placing reliance upon judgment passed by Honâ??ble Supreme Court in

V. Surinder Mohan Versus State of Tamil Nadu (2019) 4 SCC 237, it was held:

â??5(a) â?? The sum and substance of above discussion is:-

a) Respondents have the right to fix the extent of maximum disability for determining the eligibility of candidates belonging to physically handicapped

category for the posts reserved for them under The Rights of Persons with Disabilities Act, 2016. The ceiling limit of disability, however, has to be

determined by the employer after due deliberations with Department of Social Justice & Empowerment and in consultation with committee of experts

in the concerned field of medicine to be constituted by respondent No.1 for the purpose. We accordingly direct the State Government through

respondent No.1 to forthwith issue necessary instructions in this regard to all concerned departments for compliance henceforthâ?.

12. In the case in hand, the respondents 1 to 3 have not placed any material on record to show as to on what basis the upper limit of 60% of disability

for deaf and hard of hearing persons was prescribed for the post of TGT (Arts). There is nothing on record to suggest that respondents No.1 to 3

before prescribing the aforesaid limit of 60% of disability had any deliberation with experts and department of Social Justice and Empowerment. In

absence of such exercise, the prescription of 60% as upper limit for deaf and hard of hearing persons for the purpose of selection to the post of

Trained Graduate Teachers (Arts) cannot be sustained.

13. Respondents No.1 to 3 have not denied that the said prescription was not for Drawing, Yoga and Music Teachers besides teachers in the cadre of

Junior Basic Teacher and Post Graduate Teacher. It being so, the action of respondents No. 1 to 3 in prescribing aforesaid upper limit of 60% as

eligibility condition for deaf and hard of hearing candidates for the post of Trained Graduate Teachers (Arts) is arbitrary, irrational hence illegal. The

determination as envisaged under Sections 33 and 34 of the Act cannot be left to the sole discretion of employer.

14. The plea of the petitioner that estoppel applied against the respondents No.1 to 3 becomes redundant in view of the findings recorded by us

hereinabove.

15. In view of above the petition is allowed, we hold that the action of respondents No.1 to 3 in denying the selection of the petitioner for the post of

Trained Graduate Teacher (Arts) under category of posts reserved for disabled persons (deaf and hard of hearing) is arbitrary, illegal, irrational and

violative of Articles 14 and 16 of the Constitution of India. Accordingly, notification dated 19.9.2020 published on 21.10.2020 in Rajpatra Himachal

Pradesh, Annexure P-12, is quashed to the extent it prescribes upper limit of disability at 60% for deaf and hard of hearing candidates for the post of

Trained Graduate Teachers (Arts).

16. Respondents 1 to 3 are directed to offer appointment to the post of Trained Graduate Teachers (Arts) to the petitioner forthwith by reckoning such

appointment from the date on which other selected candidates were given appointment in the same category by placing him according to his merit.

17. It is trite that in case a person was denied his/her lawful due by the other without such person being accessory to it, he /she will be entitled to all

consequential reliefs which flow from the main relief granted to him, consequently the respondents are directed to pay the arrears of salary and all permissible dues to the petitioner from the date from which he is appointed to the post of Trained Graduate Teacher (Arts). The petition is accordingly disposed of with no orders as to costs. Pending miscellaneous application(s), if any, are also disposed of.