

(2021) 04 SHI CK 0094
In the High Court Of Himachal Pradesh
Case No : CWPOA No.94 Of 2019

Hem Raj

APPELLANT

Vs

State Of Himachal Pradesh & Another

RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 33

Citation : (2021) 04 SHI CK 0094

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : J.L. Bhardwaj, Ajay Vaidya, Dinesh Thakur, Sanjeev Sood, Divya Sood, Kamal Kant Chandel

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition, the petitioner has prayed for the following reliefs:-

"i) That the respondents may very kindly be directed to offer appointment of Pharmacist to the applicant with effect from the date when other selected candidates have been offered the appointment with all consequential benefits.

ii) That the respondents may further be directed to offer regular appointment to the applicant without any further delay with all consequential benefits."

2. Brief facts necessary for adjudication of the present petition are as under:-

Vide public notice (Annexure A-2), Director Health Services, Himachal Pradesh, invited applications from eligible candidates for appearing in counseling for appointment against the posts of Pharmacist on batch wise basis. In terms of the public notice, there were in all 65 posts and desirous candidates of all categories including physically handicapped category were called upon to appear for counseling at the places mentioned in the public notice, on the dates mentioned

against the said places. Eligible candidates were to possess 10+2 certificate issued by the Board of School Education or its equivalent as also the Mark List of 1st and 2nd year diploma in Pharmacy, issued by the concerned authority. Besides this, a Registration Certificate issued by Registrar, Himachal Pradesh Pharmacy Council, registration with Employment Exchange Card and a Physically Handicapped Certificate, issued by the Medical Board, were required to be submitted by a candidate applying under the physically handicapped persons.

3. Petitioner did his diploma course in Pharmacy (Non-Engineering), from Government Polytechnic, Rohru, under the Himachal Pradesh Takniki Shiksha Board, in the year 2001. A copy of said diploma is appended with this petition as Annexure A-1. Detailed marks certificate of 1st and 2nd year diploma course of the petitioner are appended with the petition as Annexure A-2. According to the petitioner, as he was eligible to participate in the process of recruitment, he appeared for counseling on 05.08.2014 and on the recommendations of the Selection Committee, he stood selected for appointment against the post of Pharmacy, on contract basis. Alongwith the petition, list of the candidates selected for the post of Pharmacy, on contract basis, on the basis of the process initiated vide public notice Annexure A-2, is appended as Annexure A-3 and name of the petitioner figures at serial No.63 therein. In the said list, petitioner is depicted as a General Category candidate belonging to physically handicapped category with Locomotor Impairment of 40%. Note-1 in the said annexure, reads as under:-

"At present two posts of physical handicapped has been advertised by this directorate for batch wise appointment of pharmacist, only four candidates have appeared in the counseling. It is further submitted that three names have been sponsored by the physically handicapped cell (visual impaired) but they have not attended the counsel out of two posts one post got to the general visual impaired and other post deaf and dumb. But no name has been sponsored by the physical handicapped cell. It is recommended that before issuing the appointments above names candidates it may be cleared/clarified from the handicapped cell."

4. The grievance of the petitioner is that when appointments were offered to the selected candidates, on 15.01.2015, vide Annexure A-4, the name of the petitioner did not figure in the same. Petitioner has appended with the petition a Notification issued by the Department of Health and Family Welfare, Government of Himachal Pradesh, dated 23.03.2012, as Annexure P-5, which Notification issued under Section 33 of Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, demonstrates that the post of Pharmacist is identified for a person who is physically handicapped and suffers from Orthopedic handicapped. The claim of the petitioner is that the act of the respondent-department of not offering appointment to him against the post of Pharmacist, qua the posts reserved for physically handicapped persons is arbitrary because as it is not in dispute that petitioner does belongs to physically handicapped category and further as he was eligible for being appointment

against the post of Pharmacist even in terms of Notification dated 23.03.2012, denial of the appointment simply on the ground that his name was not sponsored by a Physically Handicapped Cell, is not sustainable in law. Accordingly, he has prayed that the petition be allowed and the respondents be directed to offer appointment to the petitioner as from the date when other persons were offered appointment against the post of Pharmacist.

5. The petition is opposed by the respondents, primarily on the ground that the name of the petitioner and other similarly situated persons, belonging to physically handicapped category, who had participated in the counseling, but were not sponsored by the Physically Handicapped Cell, were not recommended for appointment. It is further the stand of the respondents that as the posts advertised were specifically belonging to the category of 'General Visually Impaired' and 'Deaf and Dumb', therefore also the petitioner was not recommended for appointment against the post in issue. It has not been disputed that none was offered appointment under the category of physically handicapped persons.

6. I have heard learned counsel for the parties and have gone through the pleadings as well as documents appended therewith.

7. During the course of hearing of the case, the Court had put a query to learned Senior Additional Advocate General, on the basis of the abbreviation used in the Notification dated 23.03.2012, as to what was the full form of abbreviation 'HI (PD)' and 'OI (OH)', which stood mentioned against the category of Pharmacist in the same and the Court was informed that 'HI (PD)' stood for 'Hearing Impaired (partially deaf)', whereas 'OI (OH)' stood for 'Orthopedically Impaired (Orthopedically Handicapped)'.

8. A perusal of the public notice (Annexure A-2) demonstrates that it was a general notice issued to all eligible candidates with regard to the counseling which was to be conducted for 65 posts of Pharmacist on batch wise basis and it stated that all desirous candidates of all categories including 'physically handicapped' were to appear for counseling at State Health and Family Welfare Training Centre, Parimahal, District Shimla, H.P., on the date mentioned against each district. This public notice nowhere mentioned that the post in issue was reserved exclusively for the categories of 'General Visually Impaired' and 'Deaf and Dumb', as is mentioned in the reply filed by respondents No.1 and 2. It is further not in dispute that the petitioner otherwise possessed educational qualifications to be considered against the post in issue and his name was included in the list of selected candidates for the post of Pharmacist by the Selection Committee, as is evident from Annexure A-3. A perusal of Annexure A-3 demonstrates that Note No.1 thereof, inter alia, contained that only four candidates had appeared in the counseling against two posts of Physically Handicapped and three persons who were sponsored by the Physically Handicapped Cell (visual impaired) had not attended the counseling. It further stood mentioned therein that out of two posts, one post was to go to 'General

Visually Impaired' and other to the 'Deaf and Dumb' category, but as no name has been sponsored by the Physically Handicapped Cell, it was recommended that before issuing appointments, the names of the selected candidates be cleared/clarified from the Physically Handicapped Cell.

9. The documents appended with the reply demonstrate that correspondence was exchanged between Director Health Services, Himachal Pradesh and the Physically Handicapped Cell of the Directorate of Labour and Employment with regard to the appointment of petitioner and other similarly situated persons, who had participated in the process, but the same lead to no definite conclusion.

10. Be that as it may, in the present case, admittedly, the candidates who were sponsored by the Physically Handicapped Cell, did not participate in the counseling. The petitioner, whose name was not sponsored by the Cell concerned, otherwise participated in the counseling and in view of the settled law of the land, that it is not a mandatory condition that only those persons whose names are sponsored by the Cells concerned, have a right of consideration and all eligible candidates have a right of participate in the process, in my considered view, non-sponsoring of the name of the petitioner by the Physically Handicapped Cell, does not renders the candidature of the petitioner bad in law. This is more so for the reason that it is not the case of the respondents that petitioner was not suffering from physical disablement or was not entitled for benefits provided for differently abled persons under the 1995 Act. Therefore, the act of the respondent-department of not offering appointment to the petitioner on the ground that his name was not sponsored by the Physically Handicapped Cell, is not sustainable in law.

11. The stand of the respondents to the effect that petitioner could not be offered appointment for the reason that the posts were reserved for 'General Visually Impaired' and 'Deaf and Dumb' category, is also not sustainable in law. In fact, this stand of the respondents is in complete contradiction to the contents of Notification, dated 23.03.2012 (Annexure A-5), in terms whereof, the post of Pharmacist has been identified as to be filled up from amongst physically handicapped persons, who suffer from Orthopedic Handicap. Petitioner is suffering from Locomotor Impairment to the extent of 40%, which is a orthopedic handicap. Therefore, the petitioner otherwise was eligible to be considered for appointment against the post in issue.

12. In view of the discussion held hereinabove, as the act of respondent-department of not offering appointment to the petitioner against the post of Pharmacist, qua the posts reserved for physically handicapped persons, is not sustainable in the eyes of law, especially when the petitioner was recommended by the Selection Committee for appointment and his name figured at serial No.63 against 65 posts in all advertised and at merit position No.1, as far as physically handicapped persons are concerned, accordingly, this writ petition is allowed by directing the respondents to offer appointment to the petitioner against the post of Pharmacy, reserved for physically handicapped persons, from the date when

other persons were offered appointment on the said post, on contract basis, vide Annexure A-1, with all consequential benefits including that of seniority. The benefits shall be notional as up to the date of pronouncement of the judgment and thereafter, actual benefit shall be given to the petitioner. Petition stands disposed of in above terms, so also pending miscellaneous applications, if any.