
(2004) 07 AHC CK 0167
In the Allahabad High Court
Case No : C.M.W.P. No. 47556 of 2002

Kumari Archana Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

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

Citation : (2004) 4 AWC 3264 : (2004) 102 FLR 821

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : S.P. Dwivedi and N.K. Verma, for the Appellant; Pradeep Kumar, S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and Umeshwar Pandey, JJ.—The petitioner Km. Archana Pandey is totally blind. She got first division in every examination from High School to M.Phil. The mark sheets of the petitioner are Annexure- 1 to the writ petition. She has done M.A. and M.Phil from Delhi University and got first division. True copy of the physical handicapped certificate is Annexure-2. The petitioner is the first blind student in the entire county who was passed the NET examination from U.G.C. vide Annexure-3.

2. Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 33 of the said Act states :

"33. Reservation of posts.- Every appropriate Government 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 Government may, having regard to the type of work carried on in any department or establishment by notification subject to such conditions, if any, as may be specified in such notification exempt any establishment from the provisions of this section."

3 . It is alleged in para 7 of the writ petition that ,the aforesaid Act was enforced on 1.1.1996 but thereafter even though eight years expired the provisions of the Act have not been implemented and Section 33 remained on paper and no assistance has been given to the real disabled persons who are in dire need of employment. In para 8 it is alleged that since 1.1.1996 till date not even a single incumbent from handicapped category has been appointed as a Lecturer in a degree college under the U. P. Higher Education Service Commission Act. It is alleged that advertisement Nos. 30, 31, and 32 was Issued by the Commission copies of which are Annexures-4, 5 and 6 to the writ petition. The petitioner applied for appointment as Lecturer In Music (Vocal) against Advertisement No. 32 of 2002. In para 11 of the petition it is alleged that though the petitioner was fully eligible and was fully entitled to be called for interview the Commission arbitrarily and mechanically did not call the petitioner for interview and hence the petitioner was compelled to file a Writ Petition No. 25192 of 2002 in this Court In which by an interim order dated 28.6.2002 the petitioner was directed to be interviewed provisionally vide Annexure-9. The interview took place on 2.7.2002 and it is alleged that the petitioner did excellently but she has not been selected. In para 13 it is alleged that five recommendations were made, four from Varanasi district. It is alleged that this was because Sri R. P. Singh, member of the Commission belong to Varanasi and he exercised his influence for this purpose. It is alleged that the candidates who have been recommended are very low in merit as compared to the petitioner.

4. A counter-affidavit by the Commission has been filed and we have perused the same. It is alleged that seven posts of Lecturers in Music were advertised five in general category and two In S.C. Category. In para 2 (g) of the counter-affidavit it is stated that there could not be any reservation for handicapped category because the reservation rule permits only 1% quota. Since there were only five posts in general category hence there could not be any reservation. The petitioner was considered by the Interview Committee as a general candidate but she did not have the requisite merit in interview and hence could not be selected. In fact she was short listed.

5. In our opinion the stand taken by the Commission is untenable. If this stand is accepted then only 100 posts are advertised a handicapped person can be selected. In our opinion this cannot be the correct legal position as that would totally frustrate-- the intention of Parliament. In our opinion the total number of Lecturers in Music in all the degree and P.G. Colleges in U.P. have to be

calculated and only thereafter the 1% quota for blind candidates has to be considered. Hence in our opinion the 1% quota for blind candidate cannot be considered for each separate advertisement but in respect of the entire number of posts of Lecturer in Music in all the Degree and Post Graduate Colleges in U.P. This calculation should be done taking into consideration not merely the vacant posts of lecturer in Music (Vocal) in U. P. but all the posts (whether filled or unfilled) in Lecturer in Music (Vocal) in U.P. Only after calculating all such posts should the 1% quota for blind candidates be calculated and allotted for the blind candidates who fulfil the requisite educational qualification. In the present case there is no dispute that the petitioner fulfils requisite educational qualification. In fact she is not only M.A. and M.Phil in Music from Delhi University in first division but she is only blind candidates who has done NET in India.

6. We would further like to state that if the entire number of posts whether filled or vacant of Lecturer in Music in the degree and post graduate colleges in U.P. are 50 or above but less than the 100 then number could be treated as 100. In other words in such a case one seat should be reserved for blind candidate as that is the only way of rounding off the number.

7. For the reasons given above this writ petition is allowed. And the respondent Commission is directed to reconsider the petitioner's application in the light of the observations made above and give her the benefit of reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, preferably within a month of production of certified copy of the judgment before, the (Commission.