

(1998) 04 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2260 of 1997

Lal Chand Korani

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Rajasthan Employment of Physically Handicapped Rules, 1976 — Rule 7(3)

Citation : (1998) 3 RLW 1455 : (1998) 3 WLC 746 : (1998) 1 WLN 603

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.L. Gupta, J.—In pursuance of the Notification Annx. P/1 datd 24.4.1997. petitioner Lalchand Korani applied for the post of Teacher Gr. III. In the notification it was notified that there was reservation for the physically handicapped persons. The physically handicapped applicants were required to enclose a certificate, issued by competent medical officer within three years.

2. The petitioner's case is that he was suffering from Polio from the childhood and his physical impairment is medically termed as "Residual Poliomyelitis with lower limb" and hence he obtained a certificate from the competent medical officer of 23rd April, 1992 certifying that he was orthopaedically handicapped, and he enclosed this certificate alongwith the application but the respondents refused to accept" his application on the ground that the certificate was not more than 3 years old and this compelled him to submit his application for the general category candidates. It has been averred that the petitioner was entitled to be considered for the post reserved for handicapped persons on the basis of the certificate produced by him. It has been prayed that the respondents be directed to consider the candidature of the petitioner for appointment to the post of Teacher Gr. III as physically handicapped person.

3. In the reply, the respondents have averred that the petitioner, though

produced a certificate Annx. 4 indicating that he was physically handicapped person, yet he applied for the post in the general category and therefore he cannot raise grievance in the writ petition that he was not considered for the post in the physically handicapped category. It has also been averred that the certificate produced was more than three years old and therefore it could not be considered.

4. In the rejoinder, it has been averred that in the 1976 Rules, no duration has been provided for a certificate of physically handicapped person and a patient who is suffering from polio cannot be cured by afflux of time and as such the petitioner could not be deprived of his right of appointment on the basis of the certificate produced by him. Regarding the application, seeking appointment in the general category, it has been averred that when the respondents refused to accept the application of the petitioner on the basis of certificate Annx. 4, he had no alternative but to apply in the general category but this should not be considered as waiver on the part of the petitioner.

5. The matter was listed for orders on the stay petition. However, both the learned Counsel request that the matter may be finally disposed of.

6. The contention of Mr. Lohra is that the Rajasthan Employment of the Physically Handicapped Rules, 1976 (for short, 1976 Rules") nowhere provide that the certificate of the physically handicapped person should be of a period not earlier than 3 years and therefore the respondents acted arbitrarily when they denied the consideration of the application of the petitioner on the ground of physically handicapped person. He points out that the polio is not a curable disease, and it has not been averred in the reply that it could be cured within a period of 3 years and therefore the duration of the certificate was not at all material. He further submits that the petitioner had no occasion to challenge the action of the respondent in refusing to entertain his application as a physically handicapped person as on 15.5.1997 when he appeared for interview alongwith his application and testimonials, the respondents denied the consideration of his application on the ground that the certificate was more than 3 years old and therefore he was compelled to apply again on 16.5.1997 in the general category.

7. Mr. Jain, on the other hand, contends that when the petitioner himself applied in the general category, he is estopped from challenging the action of the respondents in refusing to consider his application on the ground of handicapped person. He places reliance on the cases of Dr. G. Sarana v. University of Lucknow 1976 SC 2428 and K.R. Bafna v. University of Udaipur 1977 WLN (UC) 214.

8. I have carefully considered the above arguments.

9. It is first to be seen whether the petitioner is estopped from challenging the action of the respondents in denying the consideration of the application of the petitioner as handicapped person. The facts reveal that the Notification was published in the newspaper on 5.5.1997 and the last date of the applicants was 15.5.1997. On the same day i.e. 15.5.1997 the interviews were held for the

handicapped candidates. It is not denied by the respondents that the petitioner had appeared on 15.5.1997 and wanted to submit his application as a handicapped person. The defence taken by the respondents is that the certificate filed by the petitioner did not make him eligible for consideration as a handicapped person as it was of a date beyond 3 years. It is obvious that the petitioner was not allowed to apply as a handicapped person on 15.5.1997. In these circumstances, if he again applied on 16.5.1997, as a general category candidate, it cannot be accepted that the petitioner is estopped from challenging the action of the respondents. The petitioner, who was in need of employment, had no alternative but to try his luck as a general category candidate on 16.5.1997, when he was not interviewed on 15.5.1997 on the ground that the certificate was more than 3 years old.

10. The cases relied on by Mr. Jain are distinguishable. In the case of G. Sarana (supra), the candidate had appeared before the interview board with full knowledge about the members of the Board without raising any objection against the constitution of the selection board and took a chance of favourable recommendation in his favour. It was therefore held by the Apex Court held that it was not open for the petitioner to question the constitution of the Board when the decision was not favourable to him. Similarly in the case of K.R. Bafna (supra) the petitioner had not raised objection at all to the taking part in the proceedings of a member of the selection committee. It was held that his conduct disentitled the petitioner from raising plea before this Court. In the instant case, as already stated, it is not disputed that the petitioner did appear on 15.5.97 before selection committee alongwith his application to apply as physically handicapped person but in view of the certificate which was of a date beyond 3 years he was not permitted to do so. As such there was no alternative for. the petitioner but to appear on the next day and apply as a general category candidate. In my opinion, in the peculiar facts of the Case, the plea of estoppel raised by the respondents cannot succeed.

11. Now, the question to be considered is whether certificate Annx. 4 produced by the petitioner did not make him eligible to apply as a physically handicapped person. "Physically Handicapped Person has been defined in Section 2(v) of 1976 Rules as follows:

(v) "Physically Handicapped" means and includes the following categories of physically handicapped persons:

(A) Blind: The blind are those who are suffering from either of the following conditions:

(B) Deaf and/or Mute: (i) The deaf are those in whom the sense of hearing is non-functional for ordinary purpose of life.

(C) Orthopaedically handicapped: The orthopaedically handicapped are those who have a major physical defect or deformity which causes an interference with normal functioning of bones, muscles and joints.

12. In this case, item (C) of Clause (v) of Rule 2 is applicable as the petitioner is orthopaedically, handicapped person. Rule 4 of the 1976 Rules provide that there shall be 1% reservation for the orthopaedically handicapped persons. Then it has been provided in Rule 7 that a certificate of physically handicapped person shall be obtained from medical officer not below the rank of junior Specialist in the concerned speciality or Chief Medical & Health Officer at the places where there is no medical college. The certificate of disability is to be furnished by the medical officer in Form IV where the person is orthopaedically handicapped.

13. There is no provision in the Rules that the certificate to be furnished by a physically handicapped person should be of a particular duration. Counsel could not explain as to on what basis the condition of 3 years was mentioned in the notification. In the absence of a Rule directing the duration of the certificate, the condition of 3 years mentioned in the advertisement cannot be given effect. It is relevant to state that the petitioner tried to get renewal of the certificate but the medical officer who had examined him in 1992, declined to issue renewal certificate or fresh certificate. As such, it was not possible for the petitioner to have obtained fresh certificate certifying that he was orthopaedically handicapped person.

14. It is relevant to read Sub-rule (3) of Rule 7 also:

7(3) Such of the Physically Handicapped persons, who are appointed to any reserved or earmarked posts in any Government Department, shall not be subject to the usual Medical Examination provided in the respective Service rules on first entry into Government Service and the relevant Service Rules shall be deemed to have been amended to this extent.

15. A reading of the above rule indicates that if a physically handicapped person is appointed on a post, he is not required to submit himself to usual medical examination provided in the respective service rules on first entry into Govt. service and the relevant service rules shall be deemed to have been amended to this extent. This indicates the importance of the certificate obtained by physically handicapped person under the Rules. It is also to be noticed that the 1976 Rules have the overriding effect by virtue of Sub-rule (2) of Rule 1.

16. These provisions indicate that a physically handicapped person is not even required to undergo medical examination which is a condition precedent for the other persons while entering into Govt. service. The provision has been made obviously on the basis that the handicapped person had already obtained a certificate that he was a physically handicapped person. It is not clear on what basis the respondents have asked the petitioner to furnish certificate of a period of less than 3 years.

17. In the case of *Purshottam v. State of Rajasthan* 1993 (1) WLC 709 relied on by the learned Counsel for the petitioner, a handicapped person who had submitted certificate obtained from the competent authority was directed to obtain counter signatures of the superior authority. This Court did not approve

the conduct of the authorities and deprecated the same observing that it showed the narrow mindedness of the authorities. Obviously, there was no provision of counter signatures in the Rules. Similarly, in the Rules of 1976 there is no provision of a certificate of a period within 3 years. In the matter of providing relief to the persons who have been crushed by the nature of God and who are physically handicapped, it is expected that the respondent State and its functionaries take a liberal and beneficiary attitude of the entire matter, but in the instant case, the attitude of respondents is otherwise.

18. On a careful consideration of the entire material on record. I am of the view that the petitioner had a right of consideration for the post as a handicapped person and the action of the respondents in depriving him of his right is arbitrary.

19. It is to be noticed that if the petitioner gets appointment now. It is not likely to affect any other person adversely because vide order dated 12.6.1997 one post of Teacher Gr. III was directed to be kept vacant.

20. Consequently, the writ petitioner succeeds. The respondents are directed to consider the application of the petitioner for appointment to the post of Teacher Gr. III reserved for the physically handicapped person in the light of the observations made above, and if he is found suitable, he should be given appointment within two months from today.