
(1997) 01 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1774 of 1994

Lalit Kumar

APPELLANT

Vs

Life Insurance Corpn. and Another

RESPONDENT

Date of Decision : 08-01-1997

Acts Referred:

Rajasthan Employment of Physically Handicapped Rules, 1976 — Rule 5, 6

Citation : (1997) 1 RLW 440 : (1997) 2 WLC 635 : (1997) 1 WLN 80

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner is a holder of Bachelor's Degree in Commerce having passed the examination in the year 1990 as per certificate Annex. 2, and he is also a physically handicapped person inasmuch as he is suffering because of polio in both his legs. He has got. his name registered with the Rojgar Sewa Nideshalay (Central Physically Handicapped Registration Cell), Rajasthan, Jaipur for getting employment out. of the reserved quota meant for physically handicapped persons. He has also been issued a certificate of registration as required under Rules 5 and 6 and the Rajasthan Physically Handicapped Employment Rules, 1976 vide Annex. 3 attached to the writ petition. He states that the respondent Corporation had issued an advertisement in the month of September, 1992 and invited applications from the eligible persons for filling up 61 posts of Assistants and out of these 61 vacancies 3% vacancies were reserved for physically handicapped persons. Copy of that advertisement has been attached as Annex. 4. He was allotted Roll No. 4017 and was asked to appear in the written examination to be held on 29.11.1992. Having qualified in the written examination he was called for interview vide letter dated 1.3.1993 and appeared for interview on 15.3.1993. According to him he had faired well in the interview. The result of such examination was declared and all 61 persons were appointed against the vacancies advertised vide order Annex. 6. But the petitioner states

that he was shocked to know that not a single person from physically handicapped persons was appointed and all these posts meant for physically handicapped persons have been offered to the candidates belonging to general category. He made number of representations and requested the respondents to consider his candidature against the quota meant for physically handicapped persons. Some of the copies of the representations have been attached with the writ petition as Annexs. 7, 8 and 9. It is submitted that in addition to 61 persons already appointed, 32 more candidates were appointed over and above 61 and still no appointment against the reserved quota for physically handicapped persons was made. It is alleged the earlier also in the year 1991 the examinations were held and 231 persons were appointed to the posts of Assistants, and despite the fact that the petitioner had cleared the written examination and also interview but still no appointment against the quota reserved for physically handicapped persons was made. He further alleges that out of 100 marks prescribed 90 marks are for the written test and 10 marks are for the interview. He states that he had fared well not only in the written test but also in the interview. The petitioner prays for a direction against the respondents to fill up 3% of 93 posts of Assistants from amongst the physically handicapped persons.

2. In the reply filed by the respondents, it is not disputed that the petitioner has been registered as a physically handicapped person but it is stated that this fact itself does not entitle him to claim preferential employment. It is stated that he is to be considered for employment for the post reserved for physically handicapped persons. It is admitted that one Mahendra Arora was given the appointment against the post reserved for physically handicapped persons i.e. out of 3 vacancies reserved for physically handicapped persons only one has been filled up. It is stated that the petitioner was not eligible and, therefore, his name was not found in the panel of selected persons.

3. Vide separate affidavit the respondents had filed a merit list of candidates selected for the posts of Assistants as Annex. Rule 1 and a list of candidates belonging to Scheduled Castes as Annex. Rule 2 and Scheduled Tribes as Annex. Rule 3 and for physically handicapped persons as Annex. Rule 4 In the list prepared for handicapped persons as Annex. Rule 4. In the list prepared for handicapped persons only one name i.e. of Mahendra Arora has been shown as selected whereas while attaching another list as Annex. Rule 4A list of candidates belonging to handicapped category has been annexed, mentioning the name of the petitioner as well but a note has been given against the names mentioned at S. Nos. 1, 2, 4 and 5 as not eligible. No reason has been given as to why those persons are not found to be eligible. However, reliance has been placed on another Annex. Rule 5A wherein certain disabilities have been mentioned for making a candidate belonging to handicapped category to be eligible for consideration and against the post of Assistant the disability mentioned therein is disability of (i) D.H. with disability of one hand; (ii) persons with deformities of spine and chest, (iii) Deaf with hearing aid; & (iv) Dumb and only because of the

reason that the petitioner does not fall within the disabilities mentioned in Annex. Rule 5A, he has been left out as not eligible. Reliance has been placed on the Rajasthan Employment of Physically Handicapped Rules, 1976 which defines the disabilities u/s 2(v)(A) Blind (B) Deaf and/or Mute (C) Orthopaedically handicapped. It is mentioned against Clause (C) that orthopaedically handicapped are those who have a major physical defect or deformity which causes an interference with normal functioning of bones, muscles and joints. From a bare reading of the definition of orthopaedically handicapped as mentioned above it is clear that the petitioner who was a polio affected person in both of his legs did fall under the definition of orthopaedically handicapped and the respondent Corporation was not authorised to formulate or confined the disability of a person to only three classes as mentioned above. Interestingly if a person is imputed by both of his legs according to Annex. Rule 5A, that shall not fall in the category of handicapped person as per the respondents and shall not be eligible for appointment. This is not permitted. The definition of disability is very clear. A polio affected person is that handicapped person who has a major physical defect or deformity which causes an interference with normal functioning of bones, muscles and joints, and thus the petitioner's name could not be ignored on the ground that he was not eligible for being not incurring the disability as prescribed by some executive instructions of the respondents as enumerated in Annex. Rule 5A. The respondent was bound to prepare a list of merit of the handicapped persons and to appoint three persons who are handicapped under the definition. The respondent has appointed one person. 2 posts are still lying vacant and the respondent has no authority to fill up those two posts from amongst the general category or any other category in the presence of availability of the candidates available against the reserved quota of disabled persons and in such a situation the petitioner must succeed.

4. For the reasons and in view of the discussion made above a writ is issued to the respondents to consider the name of the petitioner immediately for appointment to the post of Assistant against the quota reserved for disabled persons and offer him the job without any further delay. The petitioner shall be entitled to all benefits accruing to him had he not been ignored and had been offered the job at the initial stage alongwith other disabled person.

5. The writ petition is allowed with cost of Rs. 2000/-.