

(2015) 12 CAL CK 0047
In the Calcutta High Court
Case No : W.P. No. 7840 (W) of 2011

Manotosh Kumar Barman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Constitution of India, 1950 — Article 16, 21, 32, 38(2)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33, 38

Citation : (2015) 12 CAL CK 0047

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Debashis Banerjee, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Debangsu Basak, J.—A blind person is before the Court complaining that he was wrongfully not allowed the benefit of a scribe for the written examination in the selection process for Assistant Primary Teachers conducted by the Uttar Dinajpur District Primary School Council in the year 2009.

2. The only relief sought in the writ petition is that the writ petitioner should be given an opportunity to get an appointment in the post of Assistant Teacher in the 2009 selection process.

3. It is contended on behalf of the writ petitioner that, a blind person is entitled to appear in a written examination with a scribe. This right has been recognized by Court. Reference in this context is made to All India Reporter 1993 Supreme Court page 1916 (National Federation of Blind v. Union Public Service Commission & Ors.) and Blind Persons Association Vs. Public Service Commission, .

4. It is next contended that, a blind person can be appointed as a primary teacher. In support of such contention reliance is placed on Sri. Nimai Adhikari

Vs. The State of West Bengal and Others, and an unreported decision dated December 12, 2012 rendered in W.P. No. 27370 (W) of 2012 (Blind Persons Association & Anr. v. State & Ors.).

5. Referring to the stand of the District Primary School Council appearing from a communication dated September 23, 2011 that a blind person cannot be allowed to teach, it is submitted that, such stand of the Council is not correct.

6. Due to the passage of time, the writ petitioner now seeks compensation as a relief in the present writ petition. A Writ Court can award compensation to a writ petitioner when his fundamental right is violated. In support of such contention reliance is placed on All India Reporter Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, Rudul Sah Vs. State of Bihar and Another, , Padma Rani Thakur Vs. Secretary, Department of Home and Others, and Soumen Biswas Vs. State of West Bengal and Others, .

7. None appears for the respondents in spite of service.

8. The writ petitioner is a physically handicapped person. He is 98 per cent blind.

9. The Uttar Dinajpur District Primary School Council had initiated a selection process for appointment of primary teachers in 2009. The writ petitioner had participated therein in the Bengali Medium physically handicapped category. He had made a representation dated May 28, 2010 for the purpose of taking a benefit of a scribe to appear at the written examination. The Council did not allow him to take the benefit of a scribe. The writ petitioner had participated in the written examination. He had scored zero in such written examination. The writ petitioner was called for an interview on July 12, 2010. He was, however, not selected. He was not made known his result in the selection process.

10. In this writ petition, by an Order dated September 22, 2011 the Court had directed the Council to intimate by means of a report in the form of an affidavit as to the fate of the writ petitioner in the selection process. The Council had filed a report in the form of an affidavit. It appears from such report that the writ petitioner had participated in the selection process of 2009 in the Bengali Medium physically handicapped category. He was issued an Admit Card. He had appeared in the written examination. He had obtained a zero there. His total score in the selection process was 8.62. The highest and the lowest score in the Bengali Medium Physically Handicapped Category, where the writ petitioner had participated, was 30.42 and 23.33 respectively. He was also called for an interview on July 23, 2010. He was, however, not selected.

11. The report goes on to say that, the West Bengal Primary Teacher Recruitment Rules, 2001 does not permit appointment of a scribe for a blind person taking the written examination. It states that, as the writ petitioner suffers from 98 per cent disability in vision it is not possible for the writ petitioner to participate in the whole time teaching and learning process in a primary school as there is no infrastructure for verbal teaching in the Council jurisdiction.

12. The 2009 selection process of the concerned Council is complete as would appear from the report filed on behalf of the Council. The list of the successful candidates has been declared. Due to the passage of time it is impractical to direct the Council to take a fresh examination for the 2009 selection process for the writ petitioner. The prayer written in the writ petition cannot be granted. However, the claim for grant of compensation requires consideration.

13. A blind person is entitled to a scribe while taking a written examination which is not in the Braille script. This right has been recognized in National Federation of Blind (supra). In this case the Hon'ble Supreme Court has directed the examining authority of Civil Service Examination to permit visually handicapped eligible candidates to compete and write in Braille script or with the help of a scribe.

14. In Blind Persons Association (supra) the Division Bench has allowed eligible blind persons to appear in the different competitive examinations conducted by the Public Service Commission, West Bengal with a scribe.

15. In Sri Nimai Adhikari (supra) the Court has quashed the memo issued by the Commissioner (Disabilities) which did not permit appointment of a visually handicapped person in the post of a teacher. In Blind Persons Association & Anr. v. State & Ors. (supra) the Court has directed the authorities to proceed with the selection process of teachers adhering to the provisions of Sections 32 and 33 read with Section 38 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

16. Any public body conducting a written examination which permits the participation of a visually handicapped person must allow the visually handicapped person the assistance of a scribe when such examination is not being conducted in the Braille script for such visually challenged person. A visually handicapped person has the same right as that of any other person with regard to discrimination in a written examination being conducted by a public authority. Such authority is obliged to treat all participants in the written examination equally and provide equal opportunity to compete to every participant. Asking a visually handicapped person to take a written examination not in Braille script without a scribe places such person in a definitive unfair position vis-?-vis a person without such disability. Denial of a scribe to a visually handicapped person in such circumstances is active discrimination against the visually handicapped person. In order to provide a visually handicapped person equal opportunity to compete with that of any other participant not having such disability, the examining authority is required to either have the written examination in the Braille script or provide a scribe to the visually handicapped person.

17. In Smt. Nilabati Behera (supra) the Supreme Court has treated a letter from the mother of deceased son as a petition under Article 32 of the Constitution of India. As compensation for the breach of fundamental right a sum of Rs.

1,50,000/- has been awarded as compensation apart from costs.

18. In Rudul Sah (supra) the Supreme Court while considering a petition under Article 32 of the Constitution of India has awarded compensation of Rs. 30,000/- apart from Rs. 5,000/- already paid to a person who was in jail for more than 14 years after his acquittal.

19. In Padma Rani Thakur (supra) the Division Bench has awarded compensation taking into consideration the gross salary earned by the victim and the salary that he would earn in the future. The Division Bench being conscious of the fact that the compensation could not be calculated minutely has directed payment of a lump sum of Rs. 5,00,000/- in addition to the fines realized while permitting the writ petitioner therein to file a regular civil suit claiming actual damages suffered.

20. In Soumen Biswas (supra) the Division Bench has directed payment of compensation to the prisoners whose fundamental rights were found to have been grossly violated.

21. The authorities cited disclose that Courts are empowered to grant compensation in a deserving case to a person whose fundamental rights have been violated by the State.

22. Right to employment is recognized as a part of the fundamental right of the Right to Life under Article 21 of the Constitution of India. Article 16 enjoins upon the State to provide equal opportunity to all citizens in matters relating to employment or appointment to any officer under the State. The directive principles of State policy in Article 38(2) require the State to eliminate amongst others inequalities in facilities and opportunities. The writ petitioner is 98 per cent visually handicapped. The Council had treated the writ petitioner as a handicapped person and had allowed him to participate in the 2009 selection process for primary teacher as such. While participating in the 2009 selection process in the handicapped category, the writ petitioner had sought in writing the permission of the Council to take the assistance of a scribe at the written examination. It is not the case of the Council that, the written examination was conducted in Braille script for the visually challenged. In spite thereof, such assistance had been denied by the Council. This denial was illegal. The Council authorities were obliged to take the written examination for the 2009 selection process either in the Braille script failing which they were obliged to allow a visually handicapped candidate the benefit of a scribe. In the present case the Council did not provide for taking the written examination in the Braille script for a visually handicapped candidate. It had disallowed the assistance of a scribe to the writ petitioner in spite of a written representation for such assistance made by the writ petitioner. By its actions, the Council had denied an equal opportunity to the writ petitioner to compete in the selection process. The Council authorities had denied the writ petitioner his right to employment. In fact, the Council had denied the writ petitioner the right to compete on equal basis with other

candidates by not taking his written test in Braille script and by denying him a scribe when the written test was not in Braille script.

23. The violation of the fundamental right of the writ petitioner at the instance of the Council is aggravated by the subsequent actions of the Council as well as the report filed in the form of an affidavit. In the report filed in Court, it appears that the Council has taken the stand that, a blind person cannot be allowed to teach as a primary teacher. This stand is contrary to Sri Nimai Adhikari (supra) and Blind Persons Association & Anr. v. State & Ors. (supra). This stand is unacceptable. A visually challenged person has every right to be appointed as a primary teacher if he comes within the zone of consideration after having participated in a selection process.

24. The writ petition does not disclose the basis of compensation that may be awarded in favour of the writ petitioner. The salary received by an Assistant Teacher at the relevant point of time has not been disclosed. Whether or not the writ petitioner is gainfully employed has also not been disclosed in the writ petition. In short there is no basis in the writ petition for calculation of compensation. No material has been made available to Court to calculate the compensation receivable by the writ petitioner. As the score of the candidates in the relevant category for the relevant year stands, in the unlikely event of the writ petitioner securing 100 per cent in the written examination would he have had come in the zone of consideration. Nonetheless, the writ petitioner is entitled to some compensation.

25. In such circumstances, a lump sum of Rs. 50,000/- is awarded as compensation in favour of the petitioner. The Uttar Dinajpur District Primary School Council will pay the same to the writ petitioner within 6 months from the date of communication of this order to them. This order will not prevent the writ petitioner from seeking further compensation by way of a regular suit.

26. With the aforesaid directions W.P. No. 7840 (W) of 2011 is disposed of. No order as to costs.

27. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.