
(2019) 12 SIK CK 0003
In the Sikkim High Court
Case No : Writ Petition (C) No. 52 Of 2018

Md. Nasiruddin Ansari

APPELLANT

Vs

State Of Sikkim And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

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

Citation : (2019) 12 SIK CK 0003

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : N.B. Khatiwada, Gita Bista, S.K. Chettri, A.K. Upadhyaya, Sonam Rinchen Lepcha, Praveen C. Subarna, Rahul Raman

Final Decision : Disposed Of

Judgement

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Bhaskar Raj Pradhan, J"////////

1. The question that falls for consideration before this Court in the present Writ Petition is short. However, the process of dispensation of justice to the"////////

satisfaction of the petitioner has taken a remarkably long time. The petitioner suffered an accident in the year 1993 while working in the premises of,////////

respondent nos. 2 and 3. His left arm had to be amputated and he was permanently disabled. On 26.03.2008 the Court of the Chief Commissioner for,////////

Persons with Disabilities rejected the complaint filed by the petitioner as he was found not to have been in the direct employment of respondent nos. 2,////////

and 3. However, keeping in view the fact that the petitioner had acquired disability while in employment of the contractor, who was working for the"////////

respondent nos. 2 and 3, the respondent nos.2 and 3 were advised to consider the petitioner and give him preference while making recruitment against",,,,,,,,,

â??reserved vacanciesâ? in future. In the second round of litigation, which was before this Court, in Writ Petition (C) No.15 of 2008, the petitioner",,,,,,,,,

lost and his writ petition was dismissed. However, in view of the permanent disability of the petitioner and considering his poor economic condition, the",,,,,,,,,

respondent nos. 2 and 3 were asked to consider the petitioner for appointment against any â??reserved vacancies.â? When the petitioner was not so,,,,,,,,

considered by the respondent nos. 2 and 3, the third round of litigation started. In Writ Petition (C) No. 09 of 2014 preferred by the petitioner a",,,,,,,,,

judgment dated 02.03.2015 (for short â??the judgmentâ??) was passed by this Court. The following directions in paragraph 6 of the judgment are,,,,,,,,

relevant:,,,,,,,,

â??6. For the reasons stated above, it is deemed appropriate in the interest of justice to direct the Respondents No.2 and 3 as follows:-",,,,,,,,,

(i) To comply with the directions contained in paragraph 13 of Justice Sunanda Bhandare Foundation vs. Union of India and Others : AIR 2014 SC,,,,,,,,

2869 and implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The",,,,,,,,,

Respondents-NHPC shall ensure that reservation under Section 33 of the Act of 1995 is made in terms of the identification of the posts indicated in,,,,,,,,

Annexure â??G? filed with the application dated 26-02-2015, is made within a period of 60 (sixty) days from the date of this judgment;",,,,,,,,,

(ii) After such reservation, within 30 (thirty) days and not later than that, the case of the Petitioner shall be considered in light of the observation made",,,,,,,,,

by the Division Bench of this Court in its judgment dated 27-08-2009 in WP(C) No.15 of 2008 reproduced in sub-paragraph (iv) of Paragraph 5 above,,,,,,,,

and also the written assurance given to the Petitioner by the Respondent No.2 way back in the year 1999 and 2010, Annexure P-2 (collectively).",,,,,,,,,

(iii) In the meanwhile, the Respondents No.2 and 3 shall consider as to whether the Petitioner can be appointed in any one of the vacancies arising up",,,,,,,,,

to the month of February, 2015, in keeping with the commitment expressed by the Respondents No.2 and 3 in paragraph 21 of the counter-affidavit by",,,,,,,,,

considering the circumstance as very rare and unavoidable having regard to the observations made by the Division Bench of this Court in WP(C),,,,,,,,,

No.15 of 2008 and the assurances of the Respondents-NHPC referred to above.â??,,,,,,,,,

2. It is an admitted fact that the judgment of this Court was not assailed by the respondent nos.2 and 3. The judgment therefore has attained finality.,,,,,,,,,

This was in the year 2015.,,,,,,,,,

3. In the year 2018 the petitioner is back before this Court. The petitioner complains about non-adherence of the judgment of this Court by the.,,,,,,,,,

respondent nos. 2 and 3.,,,,,,,,,

4. The pleadings in the writ petition and the counter-affidavit shows that pursuant to the judgment the petitioner was issued a letter by the respondent.,,,,,,,,,

nos. 2 and 3 dated 01.06.2015 stating that they were offering him appointment as a â??Junior Attendantâ? in the scale of pay of Rs.8700-3%-20000.,,,,,,,,,

(IDA), (WO) in the company. The terms and conditions of the appointment were also spelled out. It transpires that on 28.07.2015 the petitioner issued",,,,,,,,,

a legal notice to the respondent nos. 2 and 3. The petitioner was aggrieved by the fact that although respondent nos.2 and 3 had made an offer to him.,,,,,,,,,

for the post of â??Junior Attendantâ?? which was accepted by him and that he had also submitted the required documents he had not yet been allowed.,,,,,,,,,

to join. However, he was made to continue doing work and no appointment order had been issued to him. The legal notice was replied to by the",,,,,,,,,

respondent nos. 2 and 3 on 27.08.2015 in which the respondent nos. 2 and 3 disputed the allegation made by the petitioner. On 04.09.2017 the.,,,,,,,,,

petitioner wrote to the respondent nos. 2 and 3 in which he asserted that this Court had directed them to consider his case for appointment to the post.,,,,,,,,,

of electrician (Workman-4) as he was working as an electrician before the accident. The respondent nos. 2 and 3 responded to this letter dated.,,,,,,,,,

04.09.2017 on 21.02.2017 alleging misconduct against the petitioner. The petitioner replied reiterating his assertions but offering his apology for not.,,,,,,,,,

processing the letter through proper channel. Another reminder dated 12.12.2017 was sent thereafter by the petitioner. It is the case of the petitioner.,,,,,,,,,

that he was considered for training as an electrician vide Circular dated 23.01.2018 which was subsequently modified and his name deleted by the.,,,,,,,,,

respondent nos. 2 and 3 from the training programme. Ultimately, on 14.03.2018 the petitioner issued a legal notice seeking consideration of his case",,,,,,,,,

from W0 to W4. The respondent nos. 2 and 3 responded to the legal notice and asserted that the petitioner was appointed as "Junior Attendant",

pursuant to the judgment passed by this Court. The respondent nos. 2 and 3 further asserted that the petitioner could not be considered for training as,

an electrician due to his 85% disability. As the petitioner was not satisfied the present writ petition was filed.

5. The petitioner has prayed that a direction be issued to the respondent nos. 2 and 3 to comply with the judgment and for his appointment to the post,

of electrician at W-4 grade with all monetary benefits.

6. Pursuant to the order dated 04.11.2019 passed by this Court the respondent nos. 2 and 3 have filed compliance affidavit dated 21.11.2019 with,

various documents. Annexure R/8 (Colly) has a document titled "post identified to be reserved for the persons with disabilities in Group D". Serial,

No. 104 reflects the post of "Attendant". As per the learned Senior Counsel for the respondent nos.2 and 3 it is a reserved post for which the,

petitioner was considered. The respondent nos. 2 and 3 has also filed another document titled "identification of post in Group A, B, C & D for",

reservations of posts for physically handicapped persons" as Annexure R/8 (collectively). The present case relates to Group D. Under the category,

"Group C & D" at serial No. 20 is the post of "Attendant". Both the said documents have abbreviations under the head categories of,

disabled. The learned Senior Counsel for the respondent nos. 2 and 3 clarify that the abbreviation "OA" is short for "one arm affected".

Admittedly, due to the accident the petitioner has lost one of his arms and therefore it is quite evident that he could be considered for this post of,

"Attendant". Sanction order No. PIE/40/2011 dated 31.03.2011 also shows that under the unskilled category "Attendant" is a sanctioned,

post.

7. This Court had by the judgment directed that the petitioner should be considered against any of the "reserved vacancies" after reservation in,

terms of Section 33 of the Persons with Disabilities (Equal Opportunities/ Protection of Rights and Full Participation) Act, 1995. The post of,

"Attendant" is definitely a reserved post. Although the petitioner has prayed for his appointment as an electrician the learned Senior Counsel for,

the petitioner concedes that because of his disability he would not be able to perform a job of an electrician. The issue therefore, is limited. This Court" ,,,,,,,,, had directed the respondent nos. 2 and 3 to consider the petitioner for a â?? reserved vacanciesâ??. The respondent nos. 2 and 3 had offered him a job,,,,,,,, of â??Junior Attendantâ? vide letter dated 01.06.2015. It is the persistent stand of the respondent nos. 2 and 3 that the judgment has been complied,,,,,,,, with and therefore the petitioner was offered the post of â??Junior Attendantâ? which he accepted without any demur. In the affidavit dated,,,,,,,,

Year of

Recruitment", "Cycle No

and Point

No.", Name of post, "Whether identified for person

with Disabilities suffering

from", , , "Unreserved

or Reserved", "Name of the person

appointed and date of

appointment", "Whether the person

appointment is VH/HH/OH

or None", "Remarks,

if any.

, , , VH, HH, OH, , , ,

1, 2, 3, 4, 5, 6, 7, 8, 9, 10

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2015, 6, ATTENDENT, , , , UR, "MD NASIRUDDIN

ANSARI (10.08.2015)", OH,