

(2008) 12 JH CK 0025
In the Jharkhand High Court

Navdeep Kumar Komal

APPELLANT

Vs

Managing Director, SAIL, Bokaro Steel Plant and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

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

Citation : (2009) 1 JCR 519

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for issuance of a writ of mandamus commanding upon the respondents to provide 3% reservation to physically handicapped persons in the matter of appointment of Plant Attended Trainee in pursuance of the advertisement No. BSL/R/2007-05 and also to command upon the respondents to provide reservation to the petitioner under the category of physically handicapped while declaring the final results for appointment of Plant Attendant Trainee.

2. Facts of the case in brief is that an advertisement was issued by the respondent BSL on 8.6.2007 inviting applications for appointment to the post of Plant Attendant Trainee. Altogether, 300 posts of the Plant Attendant Trainee was to be filled up through open advertisement.

The advertisement mentioned about the reservation of SC/ST/OBC to the extent of 50% of the total vacancies, though no such reservation was mentioned in respect of the physically handicapped persons.

The petitioner, who happens to be physically handicapped with locomotor disability, had also submitted his application along with his medical certificate. Admit Card was issued to him for appearing at the written test which was scheduled to be held on 23.9.2007. After having appeared at the written test, the petitioner was expecting that physically handicapped persons would be given reservation since it was a statutory obligation on the part of the respondent

authorities. However, on the publication of the results of the written test, the petitioner's name did not figure in the list of the successful candidates.

Being aggrieved, the petitioner has filed the present writ application with his prayer, as mentioned above.

3. The main contention of the petitioner is that by failing to provide reservation to the physically handicapped persons, the respondents have tried to defeat the mandate of law under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is further argued that the reservation to be physically handicapped persons has been given earlier in other plants of the SAIL including Bhilai Steel Plant. Even under the respondent Company, there are several physically handicapped persons employed as Plant Attendant Trainee.

4. A counter-affidavit has been filed on behalf of the respondents. The stand taken by the respondent is that job of Plant Attendant Trainee requires physical and manual labour in extremely physical tiring and hazardous conditions within the factory premises and it is directly related to the production of the Company. It is thus essential that physically fit persons only are deployed in such job. Further stand is that the physically handicapped persons are no doubt given appointment in the respondent company but on other jobs which are clerical in nature and which are considered as light jobs in and around the township etc for which special recruitment drive is adopted. The claim for reservation for physically handicapped persons in the particular job of the Plant Attendant Trainee, is therefore not tenable. It is further submitted that the examination results in respect of the Plant Attendant Trainee was published on 23.9.2007. Those who had qualified in the written examination, were called for interview between 5.12.2007 to 12.5.2007, where-after final result was published on 7.12.2008 and all the selected appointees have joined their respective posts upon final publication of the results.

5. Admittedly, against 300 vacancies for the post of Plant Attendant Trainee, reservations up to 50% of the total vacancies were kept for the SC/ST/OBC candidates, but no reservation was specified for the physically handicapped persons. It is not denied that the Establishment of the respondents is not exempted from application of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

6. The stand of the respondent Company is that though physically challenged / handicapped persons are given appointment under the respondent Company on the other jobs which are clerical in nature and which are considered as light jobs in and around the township etc. for which special recruitment drive is adopted by the respondent Company, the job of the Plant Attendant Trainee is hazardous which requires physical fitness of the workers and the physically handicapped disabled persons are not found suitable for such jobs.

7. The above stand of the respondents has been challenged by the petitioner

with his counter assertion that several physically handicapped persons have been recruited and are presently working under the respondent Company as Plant Attendant Trainee. The designation of the Plant Attendant Trainee was originally known as "Khalashi". Petitioner has also annexed a list of names of employees of the respondent Company who are engaged in discharging the work as Plant Attendant Trainee though they are physically handicapped. He has also annexed a copy of the advertisement issued by the Steel Authority of India Limited, Bhilai Steel Plant on 11.1.2008 inviting application for appointment for the post of Attendant -cum-Junior Staff Assistant (Trainee) in which reservation for physically handicapped persons has been specified. These submissions of the petitioner have not been denied or disputed by the respondents. In the light of such facts, the stand taken by the respondents that the physically handicapped persons are not suitable for the job of the Plant Attendant Trainee, does not appear to be convincing and reasonable. The respondents were therefore certainly bound to reserve the requisite number of posts for the physically handicapped persons under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

8. It however appears that the process of recruitment has already been completed and 300 vacancies have been filled up and selected candidates have already joined their respective posts. At this stage, after the vacancies have already been filled up, it would not be appropriate to undo what has already been done and put the appointment of the candidates already appointed, at stake.

9. Under such circumstances, in case any vacancy for the general category candidates in which the petitioner had applied, remain vacant on account of non-joining of any selected candidate, the respondent shall consider the case of the petitioner for his appointment, regard being had to the merit of the petitioner's performance in the written test.

With the above observation, this writ application is disposed of.