

(2001) 01 DEL CK 0030
In the Delhi High Court
Case No : CWP. 2549 of 1995

Pushkar Singh and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Citation : (2001) 2 AD 749 : (2001) 90 DLT 36 : (2001) 57 DRJ 734

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Aman Hingorani, Ms. Ameena Ahmadi, Ms. Reema Bhandari and Ms. Priya Hingorani, for the Appellant; Mr. S.K. Luthra, Mr. Nishikant Pandey, for Mr. Maninder Singh, Mr. Rajesh Benati, for the Respondent

Judgement

A.K. Sikri, J.—This petition discloses that notwithstanding clear, unambiguous and laudable objectives sought to be achieved by a decision, how it remains only on paper because of apathy, lack of will and lackadaisical approach of the authorities who are supposed to implement such decision. The laudable decision here is that of Executive Council of the University of Delhi taken vide its Resolution No.193/(SIC) on 16th July, 1994 with a vision to help the visually and Orthopedically handicapped persons to get teaching posts in the University and Colleges. It provided, vide aforesaid Resolution, 3 per cent reservations with immediate effect for blind and Orthopedically candidates in teaching post in the Delhi University and the Colleges affiliated to the University. It also provided that at least one disabled person must be appointed in each college during the academic year 1994-95. The Executive Council's vision is clear from the fact that what it did by aforesaid Resolution ultimately got the nod even of the Parliament which enacted Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1) of 1996 (hereinafter to be referred as "Disability Act"). The decision of the Executive Committee backed by legislative mandate remains only on paper till date is the telltale of this writ petition. This writ petition was filed in the year 1995 wherein petitioners cried foul in the manner in which the authorities slept over the matter and sought to secure the

implementation of the aforesaid Resolution dated 16th July, 1994. However, entangled in the web of technicalities because of routine, unmindful and hyper-technical objections taken to maintainability of the writ petition and by putting various procedural spokes, respondents have seen to it that the petition does not progress with smooth wheel. The visionary zeal remains illusory because authorities feel "crippled" in getting implemented their own orders. In the process more than 5 years have expired and the result is that it is the respondents which have compounded the problems for themselves in not implementing their own decision which was their legal, moral and social obligation to do so suo motu.

2. The justification of the aforesaid outburst could be traced by highlighting the relevant events that have led to filing of the present petition and the stand taken by various authorities during the currency of this petition.

3. This petition is filed by 5 petitioners. Petitioners 1 to 4 are individuals who are all handicapped persons either visually or Orthopedically and who are aspiring to get teaching post in the University/Colleges and claim to be duly qualified for the same in all respects. Petitioner No.5 is Indian Association for Special Education and Rehabilitation.

4. As mentioned above, the Executive Council of the University of Delhi, vide its Resolution No.193(3) of 16th July, 1994, decided that there is to be, without relaxation in required qualifications, 3 per cent reservation with immediate effect for blind and Orthopedically handicapped candidates in teaching posts in the University and Colleges and that

i. The 3% reservation as recommended by the Committee for blind and Orthopedically handicapped categories be made known in every advertisement of the University Colleges, so that the disabled persons can apply to the University/Colleges.

ii. To begin with the University should write to all the colleges that at least one disabled person must be appointed in each college during the academic year 1994-95...

5. The above Resolution was communicated by the Registrar University of Delhi, by his letter dated 25th October, 1994 to each Head of Department/Principal of College for necessary action.

6. The petitioners have raised the grievance that with the sole exception of Dr. Ambedkar College, none of the colleges of the University of Delhi have complied with this Resolution till date inasmuch as they have not appointed even one disabled during the academic year 1994-95 despite there being several disabled candidates for the numerous vacant posts advertised by the individual colleges. In fact what was said in the petition in respect of academic year 1994-95 is true till date, although we have entered new millennium in the meantime. It is averred in the petition that Petitioners 1 to 4 have duly applied and claimed the

benefit of reservation in terms of aforesaid resolution in various colleges. The colleges were also specifically informed about the mandatory direction contained in Resolution dated 16th July, 1994 but no heed was paid by the colleges to this Resolution and colleges have discarded the Resolution with impunity. The petitioners individually and collectively with other similarly situated candidates made repeated representations even to Vice-Chancellor. Representations dated 23rd March, 1995 and 2nd April, 1995 are annexed with the petition. Responding to these representations, Vice-Chancellor vide his letter dated 24th April, 1995 directed the Principals of all the Colleges to adhere to the said Resolution dated 16th July, 1994, even emphasising that he had been informed that there were some bright candidates in the field of Art and Social Sciences. However, Colleges continued to ignore the directions of Vice-Chancellor compelling the petitioners to make yet another representation dated 4th May, 1995. The petitioners even approached Delhi University Teachers Association (DUTA) to take up the issue. They even threatened the Vice-Chancellor by their letter dated 16th May, 1995 for holding mass hunger strike unless the needful is done. They in fact went on mass hunger strike on 19th May, 1995. This evoked assurance of Vice-Chancellor to Academic Council of the University on 21st May, 1995 to the effect that he will look into the issue of implementation of the said Resolution. Notwithstanding all these steps taken by the petitioners in knocking the doors of all who matter, when petitioners did not succeed in making the authorities realised that they were supposed to implement their own decision, the petitioners knocked the door of justice as the last resort by filing the instant petition on 12th July, 1995.

7. After stating the aforesaid facts in the writ petition, it is submitted by the petitioners that Vice-Chancellor was under the statutory obligation to comply with the Resolution of the Executive Council of the University and this statutory obligation could be spelled from various provisions of Delhi University Act as well as its statutes and ordinances which have been quoted extensively. In this writ petition, University of Delhi is arrayed as Respondent No.1, Vice-Chancellor of Delhi University as Respondent No.2 and Respondent Nos.3 to 21 are various Colleges affiliated to Delhi University.

8. It cannot be disputed that the Executive Council of University of Delhi had taken the decision vide Resolution No.193/3 dated 16th July, 1994 resolving to give 3% reservation for visually and Orthopedically handicapped candidates in teaching post in the University and its colleges. To begin with, it was also decided that at least one disabled person must be appointed in each college during the academic year 1994-95. However, nothing happened. Directions were issued to the Head of Departments/Principals of all colleges of the University to comply with the decision contained in the aforesaid Resolution. Most of the advertisements issued by the Colleges for filling up of the teaching post produced along with the writ petition filed by the petitioners do not even mention about such reservation. In some of the advertisements although it is mentioned that 3% posts are reserved for visually and Orthopedically handicapped candidates, the conduct of the respondents-colleges shows that it was more to complete the

formality in stipulating this reservation clause with no intention to follow the same. Otherwise, there cannot be any other Explanation for not giving a single post to any such handicapped candidate. None of the Departments of the University or Colleges have been able to show the appointment of even one disabled person during the academic year 1994-95 or even thereafter till date. Various excuses have been given from time to time. As far as University is concerned it threw its hand off by saying that in spite of directions of the Vice-Chancellor to comply with the aforesaid Resolution, colleges have not bothered to do the needful. Thereafter another excuse came forward, namely, UGC had not agreed with such a Resolution in principle. This is notwithstanding the fact that in the meantime Disability Act came to be enacted by the Parliament which made it mandatory for all such respondents to reserve 3% posts for handicapped candidates. It is, however, correct that UGC consumed much time in clarifying its stand. Initially it had reacted with doubt on such reservation for handicapped persons. However, on repeatedly being coaxed by the Court, ultimately it yielded and a statement was made before the Court that such a reservation could be provided for by the respondents. The attitude of the colleges provides yet more grim and sad story. The stand taken is either that there is no post which could be reserved for disabled person or that in spite of providing for such reservation and considering the candidature of such handicapped persons including the petitioners, no such handicapped person was found fit enough to be appointed for the post and it was contended that after all the petitioners or such handicapped persons only had right to be considered for the post and no right to be appointed to a post. I shall revert to this aspect a little later after I complete the narration of the apathetic and recalcitrant attitude of the respondents. During the arguments when respondents were confronted with their own Resolution as well as the statute book in the form of Disability Act, pat came the evasive response, namely, respondents were feeling difficulties as the posts which could be reserved for such handicapped persons were not earmarked. It was contended that as per Section 32 of the Disability Act it was the responsibility of the Government of India to undertake the exercise of identifying the posts in Group A,B,C & D to be reserved for persons with disabilities and so long as it was not done the respondents were helpless. A lame excuse. Still, in order to meet this objection of the respondents as well, it was for this reason that Union of India was imp leaded as a party and notice was directed to be issued to do. The affidavit which has been filed on behalf of Union of India mentions that Expert Committee under the Chairmanship of Additional Secretary (SJ & E) has been constituted on 2nd July, 1999 for review of identification of jobs done in 1986 and to identify more suitable jobs in Government Establishments, Public Sector Undertakings. However, it clarified that instructions contained in Department of Personnel and Training vide Office Memorandum No.36074/4/86-Estt.(SCT) dated 25th November, 1986 relating to posts identification for the persons with disability still holds good. Thus from this affidavit it is clear that although fresh exercise is on, nonetheless the earlier instructions on posts identification as contained in Office Memorandum dated 25th November, 1986 still holds the field

and, Therefore, are to be complied with. Thus even identification of the posts is available to the respondents which was done as far back as in 1986 by the Government.

9. In the context identification of posts, it may be pointed out that Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training had issued long ago "Brochure on Reservations and Concessions for Physically Handicapped in Central Government Services". A reading of the various provisions and guide lines contains answers of almost all the so called difficulties which are expressed in implementing the decision of the University. It deals with identification of jobs for physically handicapped, calculation of number of reservations every year. Even computation of number of vacancies is mentioned by pointing out that 100 point roster is to be maintained by all Heads of Departments and each cycle of 100 points would be divided into 3 blocks comprising the following points:

1st Block- point No.1 to point No.33.

2nd Block- point No.34 to point No.67.

3rd Block- point No.68 to point No.100.

10. It further mentions that for each block of vacancies, one vacancy for physically handicapped would be reserved in posts/grades identified as suitable to be held by the physically handicapped. It also specifies "Relaxations and Concessions which are to be given to such handicapped persons in the following terms:

"3. Relaxation of Standards :- If sufficient number of physically handicapped persons are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category would be selected under the relaxed standard of selection to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the posts in question.

[O.M. NO.14016/1/85-Estt. (SCT), dated 4-9-1985]."

"4. Preference in Appointment:- In categories of posts in Group "C" and Group "D", which are identified as being suitable for handicapped persons, other things being equal, preference should be given to handicapped persons even in excess of the quota reserved for them."

[O.M. No.39016/6/77-Estt. (SCT), dated 4-11-1977].

A number of jobs under Group "A" and Group "B" have been identified as can be held by physically handicapped persons. In the recruitment to these posts preference would be given to physically handicapped persons.

[O.M. No.36034/4/86-Estt. (SCT), dated 25-11-1986]."

11. This Brochure further makes reservation for physically handicapped as

mandatory. Appendix-I to this Brochure is the list of jobs identified for being held by physically handicapped. One may refer to the report of the committee on identification of jobs in Group "A" and Group "B" posts for the physically handicapped which is annexed as Appendix-II. As per this report, the Committee considered the suitability of the handicapped persons for 15 Groups of posts which includes teaching posts as well. So far as teaching is concerned, the Committee felt that jobs in Universities in fields such as humanities, Law and Languages can be handled by Orthopedically handicapped and blind persons. If respondents had taken the trouble of reading and following the instructions contained in this Brochure, it would not have come up with the excuses of the nature mentioned above.

12. The narration of the aforesaid events show how callous approach is shown by the respondents and nothing concrete has happened even when the University took the decision for reserving posts for visually and Orthopedically handicapped persons more than six years ago and the Parliament passed law to this effect more than 4 years ago. When it comes to showing sympathies with disabled persons, we come out with all kinds of slogans and catchwords. We admit that social discrimination is the most significant problem experienced by people with disabilities and we should eradicate it. We recognise that it is not tragic to live in a wheelchair, disability only becomes a tragedy when society fails to provide the things one needs to lead one's life and that the design of our physical environment should reflect our understanding of the real needs of the disabled. We realise the necessity of creating a more accessible and a more caring society for people with disabilities. But when it comes to real action, we forget that people with disabilities have the right to be both equal and different. In fact this case amply proves that physical and attitudinal barriers are more limiting than limbs that are paralysed and that other people's attitudes not one's own disability, whether it came from birth or later, are the biggest barriers.

13. Undisputably the people with disabilities also have same rights, hopes and aspirations as everyone else. They are to be provided with equal opportunities and rather better incentives for their rehabilitation in the society. Asian and Pacific countries, primarily with this end in view, started decade of disabled persons from 1993 which is to go up to the year 2002. For this purpose a meeting was held in Beijing on 1st to 5th December, 1992 called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons". In this meeting Asian and Pacific countries adopted the Proclamation on the "full participation and equality of people with disabilities in the Asian and pacific regions". To give effect to this proclamation Parliament in India passed the enactment known as "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". Statement of object and reasons to this Act which was appended to the Bill, before it was enacted, reads as under :-

"The meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and

Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory of the said proclamation and it is necessary to enact a suitable legislation to provide for the following:-

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) Accordingly, it is proposed to provide inter alias for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provisions of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.

3. The Bill seeks to achieve the above objects.

14. Therefore, it is expected that the authorities make all efforts to achieve the objectives projected by the aforesaid legislation.

15. At least on papers again, we may conclude the matter with happy ending. For, all the respondents are now unanimous that in the teaching post in the University, reservation at the rate of 3% is to be accorded to the handicapped persons. Even otherwise respondents are bound to do so in view of their own Resolution as well as the provisions of Disability Act. The main difficulty which was pointed out by the respondents was that the posts are not identified. After the aforesaid clarification, respondents agree that they would abide by the OM dated 25th November, 1986 and act in accordance with that. Yet another difficulty which was pointed out was that in the 200 point roster, no such reservation for the handicapped persons is shown and in the absence of any

roster it becomes difficult to earmark the posts for such handicapped persons. Once the reservation is provided, it is for the respondents to ensure as to how it is to be implemented and for that purpose, if necessary changes in the 200 point roster are to be carried out that should be done by the respondents. It cannot be an excuse for not adhering to the provisions of law. It has already been pointed out above that in the "Brochure on Reservations and Concessions for Physically Handicapped in Central Government Services", it was pointed out that 100 point roster would contain the reservation for handicapped. It was not difficult to do this exercise in 200 point roster as well. Only will to do the same was required.

16. The only area of controversy which now remains is as to from which date reservation should be applied. Mr. S.K.Luthra, learned counsel appearing for the University and some of the Colleges submitted that the posts which have been advertised from time to time have already been filled and, Therefore, the directions should be given to comply with these provisions in respect of vacancies occurring henceforth. On the other hand Mr. Aman Hingorani, learned counsel appearing for the petitioners submitted that if the respondents have failed to comply with their own decision and the statutory requirements by not acting hitherto, petitioners should not suffer. It is also pointed out that this petition was filed in the year 1995 and on the very first date of hearing i.e. on 14th July, 1995 when notice to show cause was issued in the petition, in CM.4271 of 1995 filed by the petitioners, this Court had passed the order that any appointment made shall be subject to the decision of the writ petition. If respondents have made the appointments which are subject to the decision of the writ petition, the respondents are bound to abide by that. There is a force in the submission of learned counsel for the petitioners. In the writ petition, the petitioners have challenged the advertisements issued by the respondents on the ground that either these advertisements do not mention about reservation for visually and Orthopedically handicapped persons or no steps are taken to give such reservation. In State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another, , it is held by the Supreme Court that where rule of reservation is applicable faculty wise and discipline wise reservation should be indicated in the advertisement. In none of the advertisements it is stated as to which post was reserved for the handicapped persons under 3% reservation quota. Once that is the factual position, learned counsel for the respondents is not right in contending that the case of the petitioners or other handicapped persons, who applied was duly considered. Their consideration against reserved post as handicapped persons and their consideration along with other general candidates treating them as general candidate would make all the difference. Consideration of later type is no answer to the problem posed and would not be a valid and legal consideration. Therefore, in those advertisements where no provision for reservation for handicapped persons is made, it would pose no difficulty in holding that such advertisements were not legal and proper even in those cases where it is mentioned that 3% reservation would be given to the handicapped persons but no particular post is reserved and when the candidature of such persons like the

petitioners is considered along with general candidates, there is no option but to hold that such consideration was not valid.

17. In view of the aforesaid discussion, this writ petition is allowed in terms of following directions:

1. The respondents are directed to comply with Resolution No.193/3 dated 16th July, 1994 of the Executive Council of Delhi University w.e.f. the date of this Resolution.

2. This exercise should be done to calculate the number of posts which will have to be reserved for visually and Orthopedically handicapped persons in terms of the aforesaid Resolution and the provisions of Disability Act and the number of posts which are to be reserved in the aforesaid manner should be earmarked subjectwise keeping in view the criteria laid down in OM dated 25th November, 1986.

3. This exercise be done within a period of two months from the date of this judgment.

4. After undertaking the aforesaid exercise of ascertaining the number of posts and earmarking those posts subjectwise, steps should be taken to fill up those posts from amongst the handicapped persons by adopting the selection procedure meant for filling up of such posts. This exercise be completed within a period of six months thereafter.

5. While implementing the decision aforesaid, if number of posts are not available, the respondents should have either of the following options:

i. To create supernumerary post or

ii. terminate the services of those whose appointments were made subject to the decision of this writ petition as per order dated 14th July, 1995 in CM.4271 of 1995. It is simply because the posts which would now be earmarked for handicapped persons were meant for them are occupied by others and thus recruitment not validly made.

6. Pending this exercise, as per the Resolution dated 16th July, 1994, as one appointment to the teaching post which was to be made during the academic year 1994-95 and the same has not been done till date, be made and the post be filled from amongst the handicapped persons by each college within a period of two months from today. For such appointments, petitioners should also be considered favorably.

18. Petitioners shall also be entitled to costs. Counsel fee is fixed at Rs.10,000/-. It will be paid by both i.e. Delhi University and University Grants Commission in equal proportion i.e. Rs.5,000/- each.