

(2015) 10 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 883/2015 in Civil Writ Petition No. 11071/2014

Rajasthan Public Service Commission

APPELLANT

Vs

Hunny Chugh and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2

Citation : (2015) 10 RAJ CK 0052

Hon'ble Judges : Ajit Singh, Actg. C.J. and Anupinder Singh Grewal, J.

Bench : Division Bench

Advocate : S.N. Kumawat, for the Appellant; Himanshu Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard on admission.

2. This intra-Court appeal is directed against the order dated 20.08.2015 passed by the learned Single Judge of this High Court, whereby he has dismissed appellant's S.B. Civil Writ Petition No. 11071/2014 with cost of Rs. 50,000/-, to be paid to respondent No. 1 for having been unnecessarily drawn into litigation.

3. On 02.05.2013, the appellant-Rajasthan Public Service Commission (hereinafter "the RPSC") published an advertisement for appointment of 173 Programmers under the Rajasthan Computer State and Subordinate Service Rules, 1992. Reservation of the posts was also made for the persons with disabilities, as contemplated under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, "the Act of 1995"). General instructions in the advertisement said that reservation on posts for the persons with disabilities would be as provided under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011 (hereinafter "the Rules, 2011"). As per the instructions, candidates with physical disability were required to submit a

certificate of disability above 40%, issued by the authorised Medical Officer of the State of Rajasthan in the prescribed format.

4. Respondent No. 1 applied for the post and was provisionally allowed to participate in the selection process. Respondent No. 1 being resident of New Delhi and suffering with disability, applied for disability certificate under the statutory rules, which has been granted by a competent medical authority of New Delhi. In the result declared on 10.03.2014, he was placed at merit No. 182. The RPSC took note of the fact that respondent No. 1 had submitted a certificate of his disability above 40%, issued by the Medical Superintendent, Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi. The RPSC, therefore, vide letter dated 14.07.2014, called upon respondent No. 1 to furnish a certificate of disability as per instruction i.e. from a Medical Board of a hospital in the State of Rajasthan.

5. Aggrieved, respondent No. 1 filed a complaint before the Commissioner under Rule 52 of the Rules, 2011. The RPSC in reply to the complaint, reiterated that a certificate of disability issued by a Medical Officer authorised by the State of Rajasthan alone was required. The RPSC also stated that if respondent No. 1 will submit the requisite certificate issued by a Medical Board of three members of a hospital in the State of Rajasthan, further action on his selection shall be taken. The Commissioner after considering the matter and relying upon an Office Memorandum dated 26.02.2013, issued by the Ministry of Social Justice & Empowerment, Department of Disability Affairs, Government of India, New Delhi providing that a disability certificate issued by a competent medical authority at any place be accepted across the country, held that disability certificate submitted by respondent No. 1 was valid and it be accepted by the RPSC. The order of the Commissioner in this regard is dated 24/25.07.2014. The Commissioner by the said order also directed the RPSC to recommend the name of respondent No. 1 to the State Government for selection to the post of Programmer, whereupon the Secretary, Department of Personnel, Government of Rajasthan shall take necessary action.

6. Aggrieved, the RPSC filed S.B. Civil Writ Petition No. 11071/2014 and raised various grounds, which the learned Single Judge has dismissed by the impugned order after giving reasons to each ground of challenge including the one that Commissioner had no jurisdiction to pass an order directing it to recommend the name of respondent No. 1.

7. The learned counsel for the appellant could not show us any statutory rule which mandates that a disability certificate issued by a Medical Officer of the State of Rajasthan alone will be treated as valid for the benefit of reservation to the persons with disabilities. In fact, Rule 3 of the Rules, 2011 makes no specific reference to the medical authority whose certificate alone would be relevant and admissible for the benefits under the Act of 1995. The learned Single Judge has rightly held that Rule 3(2) of the Rules, 2011 merely states that a medical authority competent to issue a certificate shall be the one situate in the district of

the applicant's residence or in the alternative, the concerned medical authority in a Government hospital where he may be undergoing or may have undergone treatment in connection with his disability. The second part of Rule 3(2) of the Rules, 2011, thus, makes a medical certificate valid issued almost from anywhere and clearly negates a residence certification. The learned Single Judge has also rightly held that under Rule 4 of the Rules, 2011, the disability certificate has to be issued by the concerned medical authority on satisfying himself that the person is indeed one with disability, as defined in sub-clause (t) of Section (2) of the Act of 1995. We are in complete agreement with the view taken by the learned Single Judge that as long as the medical certificate of disability is issued by a competent authority anywhere in the country, it is operative throughout with no geographical boundaries within the country. And it is for this reason, the Ministry of Social Justice & Empowerment, Department of Disability Affairs, with the approval of the Hon''ble Minister (Social Justice & Empowerment) under its Office Memorandum dated 26.02.2013, has clarified that the disability certificate issued by the competent medical authority at any place should be accepted across the country.

8. This being the legal position, it was highly improper on the part of the RPSC to drag respondent No. 1 into litigation, more particularly when the genuineness of the disability certificate furnished by him from a competent medical authority is not in dispute. Lastly, respondent No. 1 in reply to the writ petition also submitted a medical certificate of the Board comprising of three members of a hospital in the State of Rajasthan. In the fact situation of the case, we are also in complete agreement with the view taken by the learned Single Judge that Commissioner had the authority to direct the appellant to recommend the name of respondent No. 1 to the State Government for selection to the post of Programmer.

9. The appeal being vexatious and without merit, deserves to be dismissed at the threshold. It is accordingly dismissed.