
(2012) 03 P&H CK 0348

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1174 of 2009

Sanjay Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 33

Citation : (2012) 03 P&H CK 0348

Hon'ble Judges : Ranjan Gogoi, C.J.;Mahesh Grover, J

Bench : Division Bench

Judgement

Ranjan Gogoi, C.J.—This appeal is directed against the order dated 24.8.2009, passed in CWP No. 2542 of 2009, by which the learned Single Judge had dismissed the writ petition filed by the appellants.

2. The facts that would be necessary to be noticed may be set out at the threshold.

3. The appellants/writ petitioners No. 1 to 5 are physically handicapped persons who suffer from low vision of different proportions, the extent of which have been mentioned in the writ petition. They were selected for appointment as JBT Teachers. Though under the provisions of Section 33 of The Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act") provides, inter alia, for reservation to the extent of 1% for persons suffering from blindness or low vision, the petitioners have not been appointed in the posts against which they have been selected. Consequently, to enforce their legal rights u/s 33 of the Act, the writ petition, out of which this appeal has arisen, was instituted.

4. The learned Single Judge took into account the stand of the State which broadly was to the effect that unlike orthopaedically handicapped candidates, persons suffering from blindness/low vision or hearing impairment were not suitable for being employed as JBT Teachers as they may not be able to maintain

an effective check on the children who are to attend the school. The learned Single Judge also took into account the decision of the State Government to transfer the 2% quota available u/s 33 of the Act to persons suffering from blindness/low vision and hearing impairment to the orthopaedically disabled persons, thereby increasing the quota available to such handicapped persons to 3%. As the aforesaid Government decision was upheld by this Court by order dated 8.1.2007 in CWP 20830 of 2006, the learned Single Judge took the view that the impugned decision of the respondents could not be faulted with and the writ petition deserved an order of dismissal.

5. We have heard the learned counsels for the parties. We have perused the relevant provisions of the Act and also the order dated 24.8.2009 of the learned Single Judge under challenge in the present appeal.

6. u/s 33 of the Act, disabled persons belonging to the category of blind/low vision (with which category we are concerned) are entitled to benefit of 1% reservation of posts. However, the proviso to Section 33 of the Act vests in the State Government a power to exempt any establishment from the provisions of Section 33 of the Act. "Blindness" has been defined by Section 2(b) of the Act in the following terms:

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:

(i) total absence of sight; or

(ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

(iii) limitation of the field of vision subtending an angle of 20 degree or worse;

7. However, the expression "low vision" is not a defined expression. In the present case, while the appellants/writ petitioners No. 1, 2 and 3 claim to be suffering from low vision to the extent of 40%, the appellants/writ petitioners No. 4 and 5 claim such handicap to be to the extent of 50% to 70%. Whether such handicap would make the appellants/writ petitioners "blind or persons with low vision" has to be understood strictly within the four corners of the provisions of the Act and not on the basis of any general reference to the said expression i.e. blindness or low vision. In the present case, such an exercise does not appear to have been attempted by the State Government so as to bring the appellants/writ petitioners or any of them within the category mentioned above so as to make Section 33 of the Act applicable to their case. This is an exercise that must now be performed and a determination has to be made as to whether the appellants/writ petitioners or any of them are persons who suffer from blindness or low vision, as defined by the Act. In the event they are found to be not "blind or with low vision", naturally, they would be entitled to appointment on their own right and the question of reservation u/s 33 of the Act and the application of the proviso to Section 33 of the Act will not arise.

8. We, therefore, direct that the aforesaid exercise be done forthwith and a final decision in this regard be taken within a period of two months from today. In the event, the decision as directed goes against the appellants/writ petitioners, naturally, they may still have a subsisting demand which has been raised before us in the course of hearing of this appeal. To avoid a further round of litigation, the Court is of the view that the said demand should be also considered and the result thereof be applied in the event the appellants/writ petitioners are found to be suffering from blindness or low vision.

9. Relying on the document enclosed as Annexure P-4, learned counsel for the appellants has argued that the said decision contemplates recruitment of the physically handicapped (blind/low vision category) candidates selected for the post of JBT Teachers against ministerial posts as a one time exception. Learned counsel has drawn the attention of the Court to the fact that number of such candidates is small i.e. 12 and, therefore, the one time special exercise was recommended. It is the submission of the learned counsel for the appellants/writ petitioners that the said recommendation be implemented in the case of the appellants/writ petitioners in the event they are found to be suffering from blindness/low vision and are thus found to be not entitled to hold the posts of JBT Teachers.

10. We have considered the submissions advanced and we find that as a one time departure was recommended keeping in mind the small number of selected candidates (blind/low vision) against the posts of JBT Teachers, the cases of the appellants/writ petitioners for the benefits under the one time exception should be considered by the authorities in the event they are found to be suffering from blindness/low vision in the exercise that will now have to be performed in terms of first part of the present order. We direct the respondents to act accordingly in the event the result of the aforesaid part of the exercise goes against the appellants/writ petitioners.

11. Consequently, in view of the above discussion, the LPA stands disposed of in the above terms. The order of the learned Single Judge will stand, accordingly, modified.