

(2008) 09 DEL CK 0051

In the Delhi High Court

Case No : WP (C) No. 2869 of 2003

Secretary (Education) and Others

APPELLANT

Vs

Mr. Mukesh Chand and Another

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 33, 47, 59, 61
Constitution of India, 1950 — Article 14, 16

Citation : (2008) 154 DLT 499 : (2008) 106 DRJ 477 : (2009) 120 FLR 362

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Avnish Ahlawat, Latika Chaudhary and Nidhi Gupta, for the Appellant; P.P. Khurana and Sachin Sood, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—Here is a meritorious disabled person (respondent No. 1 herein) suffering from the problem of progressive low vision (Retenitis Pigmentosa). He being unaware of his disability opted to compete with general category candidates and topped the list of successful candidates in the examination held by the Delhi Subordinate Staff Selection Board (in short "DSSSB") for recruitment to the post of TGT (Language Teacher) in 1999. He was appointed to the post of TGT (Hindi) in Government Boys Senior Secondary School, Rana Pratap Bagh, Delhi on temporary and provisional basis subject to his being declared medically fit by the competent authority and verification of his character antecedents within two months of his said provisional appointment. Respondent No. 1 appeared before the Medical Board on 03.11.1999 and was declared medically unfit as at the time of his medical examination he was found to be suffering from Retenitis Pigmentosa (eye problem). His services were terminated w.e.f. 15.12.2000 as he was found medically unfit by the Medical Board. Respondent No. 1 made several representations to the concerned authorities against his termination and on his representations, the matter was

referred by the Director of Education for re-examination of respondent No. 1 by another Medical Board of LNJP Hospital. He appeared before the Medical Board of LNJP Hospital on 23.01.2001 but there also he was declared medically unfit found suffering from the same eye problem as detected by the earlier Medical Board. He, thereafter, filed a complaint u/s 59 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as the "Act") before the Chief Commissioner, Disabilities. The Chief Commissioner after hearing both the parties on the complaint of respondent No. 1 passed the impugned order on 16.10.2002 and directed the Secretary (Education), Department of Education, Government of NCT of Delhi to get respondent No. 1 examined from a fresh Medical Board to be constituted within 30 days making it clear to the Board that visual impairment is not a disqualification for the post of teacher. The Chief Commissioner, Disabilities vide impugned order also directed the Secretary (Education) to revoke the termination of respondent No. 1 in case the Medical Board declares him otherwise fit for the job of teacher and re-appoint him as TGT either against the general or the physically handicapped quota within 15 days from the receipt of report from the Medical Board. The petitioners being the concerned appointing authorities of respondent No. 1 feeling themselves aggrieved by the above referred order of the Chief Commissioner, Disabilities have filed the present writ petition seeking quashing of the impugned order dated 16.10.2002 passed by the Chief Commissioner for Persons with Disabilities in complaint case No. 711/2001.

2. The impugned order dated 16.10.2002 passed by the Chief Commissioner, for Persons With Disabilities was stayed by this Court vide order passed on 13.04.2003 and the said interim order passed on that day is continuing till date.

3. In response to notice of this writ petition, Mr. Khurana, learned senior counsel appearing on behalf of respondent No. 1 made a statement before the Court on 28.01.2004 that he does not wish to file any counter affidavit as only a legal issue arises in this case. As such there is no counter affidavit in the matter on behalf of respondent No. 1 who is the only contesting respondent in the case. Respondent No. 2 being the Chief Commissioner, Disabilities is only a proforma respondent.

4. Ms. Avnish Ahlawat, learned Counsel appearing on behalf of the petitioners had argued that the Chief Commissioner, Disabilities before whom the complaint u/s 59 was filed by respondent No. 1 was not competent to go into the question of his termination. According to the learned Counsel, the appropriate remedy for respondent No. 1 to challenge his termination was by filing an application before the Central Administrative Tribunal as he was an employee of Government of NCT of Delhi. It was further contended by Ms. Ahlawat that respondent No. 1 had applied for his appointment to the post of TGT (Hindi) under the general category and therefore according to her, he cannot claim the benefits of relax medical standards available to the disabled persons appointed against vacancies reserved

for physically handicapped persons. It was submitted that only those disabled persons who are appointed against vacancies reserved for them under the Rules can file complaint with regard to deprivation of their right, if any, before the authorities under the Act. Learned Counsel appearing on behalf of the petitioners had also argued that medical standards for general candidates and for persons belonging to the disabled category are different and a person appointed against general seat cannot claim benefits available to the disabled persons. It was strongly contended that the impugned order passed by the Chief Commissioner, Disabilities is without jurisdiction and should be declared a nullity.

5. On the other hand, Mr. P.P. Khurana, learned senior counsel appearing on behalf of respondent No. 1 had argued that the Government itself has recognised that people with low vision can be appointed as teachers in Government schools. Mr. Khurana had further argued that the posts of teacher in Government schools fall under the recognised category that can be filled from the people with low vision/blinds. The contention of Mr. Khurana was that in case respondent No. 1 had opted to compete along with the general candidates, he could not have been disqualified and terminated from service merely because he was found to be suffering from problem of progressive low vision (Retenitis Pigmentosa) at the time of his medical examination. Mr. Khurana had referred to the provisions contained in Section 62 of the Act to contend that the Chief Commissioner was well within its right to look into the complaint of respondent No. 1 with regard to deprivation of his right to continue in the employment of the petitioners as TGT (Hindi) because he falls in the category of disabled persons. According to Mr. Khurana, there is no error in the impugned order of the Chief Commissioner, Disabilities and therefore he has prayed for the dismissal of the present writ petition.

6. I have carefully considered the above rival arguments advanced by the learned Counsel for the parties and have also gone through the entire case file.

7. The question that arises for consideration in this matter is whether the Chief Commissioner, Disabilities under the Act is competent to go into the complaint filed by respondent No. 1 before it in regard to the termination of his services on his being found medically unfit.

8. It is an admitted case of both the parties that respondent No. 1 had applied for his appointment to the post of TGT (Hindi) as a general candidate. It is further not disputed that he had stood first position in the examination held by the DSSSB for recruitment to the post of TGT in Government school in 1999. This shows that respondent No. 1 is a brilliant meritorious person. It is also an admitted fact that respondent No. 1 was declared medically unfit because he was found suffering from eye problem described as "Retenitis Pigmentosa". He was examined not by one Medical Board but by three different Medical Boards. The first Medical Board was held in Babu Jag Jiwan Ram Hospital, second in LNJP Hospital and third in Guru Nanak Eye Centre. All the three Medical Boards found him suffering from the same eye disease i.e. Retenitis Pigmentosa which the

Medical Board of Guru Nanak Eye Centre has explained it as a problem of progressive low vision. This is a fact which is admitted by both the parties. Section 2(i) of the Act defines as to what is disability and according to the definition of disability given u/s 2(i), disability includes blinds and low vision also. Section 2(t) and Section 2(u) are also relevant and they are reproduced herein below:

2 (t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

2 (u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

9. In view of definition of expressions viz "disability", "person with disability" and "person with low vision" given in Sections 2(i), 2(t) & 2(u), respondent No. 1 falls in the category of disabled persons. The provisions of Disabilities Act, therefore, applies to respondent No. 1.

10. Section 47 of the Act provides that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. According to the proviso to Section 47, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. In the present case, respondent No. 1 was provisionally appointed to the post of TGT (Hindi) on 29.11.1999 and his services were terminated w.e.f. 15.12.2000 as he was found medically unfit, suffering from an eye problem which makes him a disabled person within the meaning of the Act.

11. Section 62 of the Act referred and relied upon by Mr. Khurana, learned senior counsel appearing on behalf of respondent No. 1 is extracted below:

Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.- Without prejudice to the provisions of Section 61, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare the protection of rights of persons with disabilities;

and take up the matter with appropriate authorities.

12. The similar powers as are given to the Commissioner in Section 62 are available to the Chief Commissioner u/s 59 of the Act. It is evident on a perusal

of Sections 59 & 62 of the Act that the Chief Commissioner is well within its rights to look into the complaint of respondent No. 1 with regard to his termination from the service because the impugned termination amounts to deprivation of his right to continue in the Government service. I do not find any merit in the contention urged on behalf of the petitioners that the appropriate remedy against the impugned termination available to respondent No. 1 was by approaching the Central Administrative Tribunal. It was for the aggrieved employee to decide which forum he want to approach for redressal of his grievance. Both the forums were available to respondent No. 1. He could file the complaint with regard to termination of his service either before the concerned authorities under the Disabilities Act or he could also file an application before the Central Administrative Tribunal. I am of the considered view that the impugned order of the Chief Commissioner by no means can be said to be without jurisdiction.

13. I also do not find any merit in the argument advanced on behalf of the petitioners that only the persons appointed against the posts reserved for disabled persons can get the concession of relaxed medical norms. Such concessions, in the opinion of this Court, cannot be denied to those disabled persons who chose to compete against general seats. If it is denied, then it will restrict the entry of disabled persons in Government service only to the extent of 3% posts reserved for them in terms of Section 33 of the Act though more than 3% meritorious persons with disabilities are available for appointment. In case a disabled person proves his worth by competing with general candidates then the only thing the Government should see is to see his suitability to a particular post in the light of disability from which he is suffering. This will ensure equal opportunity and participation to the disabled persons in Government jobs and would be in line with the fundamental rights guaranteed to every citizen under Articles 14 & 16 of the Constitution of India.

14. In the present case, the respondent No. 1 has proved his merit by topping the list of successful candidates in the examination held by the DSSSB for the post of TGT (Language Teacher). What sin has he committed by competing with the general candidates? Should he be punished by maintaining his impugned termination only because he is suffering from some eye problem which is not a disqualification for appointment to the post of teachers in Government schools? The answer to this, obviously, cannot be anything but a simple "No". It may be noted that respondent No. 1 had taken the written examination held by the DSSSB without any external aid provided to him by the Government authorities or by anybody else but still he topped the list of successful candidates. The eye problem of respondent No. 1 should not come in his way for his appointment to the post of TGT (Hindi). In the opinion of this Court, directions given by the Chief Commissioner, Disabilities in the impugned order are quite innocuous in as much as it has only directed the petitioners to get respondent No. 1 re-examined from a fresh Medical Board making it clear to the Board that his eye problem should not influence his medical fitness and to revoke the impugned termination, if he is

otherwise found medically fit. No fault can be found with such a direction contained in the impugned order.

15. In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed with directions to the petitioners to get respondent No. 1 re-examined from a fresh Medical Board to be constituted in Guru Nanak Eye Centre within four weeks from today and to reinstate him in service within 15 days of the receipt of the fresh medical report with all consequential benefits of continuity of service, seniority, etc in case he is otherwise found medically fit. However, he shall not be entitled to back wages till the date of his reinstatement on the principle of "No work, no pay". The parties are left to bear their own costs.