

(2024) 02 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 10813 Of 2023

Shanta Digambar Sonawane

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Rights Of Persons With Disabilities Act, 2016 — Section 3

Citation : (2024) 02 BOM CK 0069

Hon'ble Judges : Nitin Jamdar, J;M.M. Sathaye, J

Bench : Division Bench

Advocate : Dr.Uday P. Warunjikar, Sumit Kate, Aditya P. Kharkar, L.T.Satelkar, P.S.Gujar

Final Decision : Disposed Of

Judgement

Nitin Jamdar, J

1. Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. This case of a visually impaired candidate illustrates how administrative apathy can defeat the benefits of the legislation enacted to support the persons with disabilities.

3. A Notification 01/2019 was issued by the Respondent-Recruitment Board inviting online registration of applications from suitable candidates on 23 February 2019 for various posts, including the post of Assistant in Level-1 in 'D' grade. The Petitioner, being 100 per cent permanently visually impaired, applied for the position of Assistant under the Persons with Benchmark Disabilities category, specifying her disability as visual impairment - blind (B). The Petitioner provided a disability certificate dated 1 January 2019 issued by the Medical Authority, Parbhani, certifying her as 100% permanently visually impaired. To fill out the application form, the Petitioner sought assistance from a person at an

Internet cafe. However, during this process, the Petitioner's date of birth was erroneously entered as 10 January 1992, instead of the correct date 10 January 1993. The examination was scheduled for 2 March 2021, and the Petitioner received the hall ticket/e-call letter. Successfully passing the examination, the Petitioner subsequently received a call letter for document verification and medical verification. Document verification for the Petitioner was conducted on 17 February 2023. Following discussions with the office bearers of Respondent No. 2 - Railway Recruitment Cell regarding the incorrect date of birth, the Petitioner was informed that she could later modify the date of birth and submit the updated Aadhar Card. Subsequently, the Petitioner was called for supplementary document verification on 3 April 2023 via an email dated 28 March 2023. Meanwhile, the Petitioner had obtained the updated Aadhar Card with the correct date of birth. However, when attempting to submit the updated Aadhar Card during supplementary document verification, it was refused.

4. The Petitioner made a representation to the chairperson of the Railway Recruitment Cell on 27 June 2023 wherein the Petitioner stated that she is 100% blind and she has passed the examination and that when the Petitioner had gone for document verification, she informed that her candidature was rejected and sought information regarding the same. From the Respondents there was no communication to the Petitioner as to the reason for rejection. Consequently, the Petitioner has approached this Court through the present Petition, seeking a direction to set aside the oral rejection of her candidature and requesting that Respondent No. 2 - Railway Recruitment Cell be directed to consider her candidature for the post of Assistant. The Petitioner sought an interim direction to Respondent No. 2 - Railway Recruitment Cell to keep one post vacant for the position of Assistant.

5. The Writ Petition came up for hearing on 31 August 2023. Notice was issued to the Respondents for final disposal. The Division Bench directed that, in the meanwhile, one post of Assistant should be kept vacant if it has not been filled up until the next date.

This interim order to keep one post of Assistant vacant continues till date.

6. We have heard Dr. Uday Warunjkar, the learned Counsel for the Petitioner and Mr. L.T. Satelkar, the learned Counsel for the Respondents.

7. The Respondents have filed their reply affidavit, including a copy of the Detailed Centralized Employment Notification RRC-01/2019, which is placed on record.

8. The Respondents have submitted in the reply that the Petitioner's candidature for selection in the post of Level-1 in 'D' grade against the Notification 01/2019 issued by the Respondents on 23 February 2019 for which online registration of application was invited from the suitable candidates. Applications were opened from 13 March 2019 to 12 April 2019. As per item No. 7 of the Notification under "Important Instructions - Online Registration and Submission of Applications",

the eligibility of the candidates had to be considered only on the strength of the information furnished in the online application. If at any stage of recruitment or thereafter, it is found that any information furnished by the candidate in his/ her application is false/ incorrect or the candidate has suppressed any relevant information, or the candidate does not satisfy the eligibility criteria for the candidature will be rejected. It is stated that the candidates could modify the application particulars, but within the last date of submission of the application, by paying the modification fee. However, after the last date for submission of the application, which was 26 April 2019, the Railways would not entertain any representation for modification of the information furnished in the application. Petitioner did not avail the facility of modification in his date of birth within the stipulated period. Therefore, the Respondents informed the Petitioner vide email dated 23 October 2023 that her candidature has been cancelled. Reliance is also placed on clause 1.7 of the General Instructions, which stipulates that candidates must enter their name, father's name, and date of birth exactly as per their matriculation certificate.

9. Reliance is also placed on clause 1.7 of the General Instructions, which stipulates that candidates must enter their name, father's name, and date of birth exactly as per their matriculation certificate.

10. The Respondents have relied on Clause 7 of the Important Instructions – Online Registration & Submission of Application. Clause 7 reads thus :-

"7) Eligibility of the candidates will be considered only on the strength of the information furnished in the ONLINE Application. Candidates need NOT send printouts of application or certificates or copies to RRBs concerned by post. If at any stage of recruitment or thereafter, it is found that any information furnished by the candidate in his/her application is false/ incorrect or the candidate has suppressed any relevant information or the candidate does not satisfy the eligibility criteria for the post (s), his/her candidature will be rejected forthwith.

Candidates can modify the application particulars except Railway chosen Email ID and Mobile Number, even after submission of application, but within the last date of submission of application by paying modification fee. However, after the last date for submission of application (26.04.2019), RRB/ RRC shall not entertain any representation for modification of the information furnished in the application".

Clause 7 states that if the information furnished by the candidate is found false/ incorrect and there is suppression of any information or the candidate does not satisfy the eligibility criteria, the candidature will be rejected forthwith.

11. Considering that the Petitioner is otherwise eligible, that one post of Assistant is kept vacant for six months, there is 100% visual impairment and the explanation given by the Petitioner for the error, the petition was adjourned to 2 February 2024 to enable the learned Counsel for the Respondents to take instructions from the Respondents as to whether the Respondents would consider

the case of the Petitioner. In response, no impediment is pointed out except adherence to the cutoff date. We had expected that when the Court had specifically kept one post aside so that a positive response is received from the Railway Authority. Even then the Respondents- Authorities insisted upon rejecting the Petitioner's candidature oblivious to the serious disability faced by the Petitioner. In view of this stand taken by the Respondents, we are required to elaborate upon the object of the Act of 2016 and how the Authorities should approach the cases of person with disabilities such as the Petitioner.

12. The entire emphasis of the Respondents is on the erroneous entry of one digit in the application form, where instead of 10 January 1993, it is stated as 10 January 1992 and the time limit for correction. The Petitioner, being visually impaired, sought assistance from someone at an internet cafe, who inadvertently entered the wrong year, a single-digit mistake. Clause 7 allows for modification in such instances. The Petitioner had provided an updated Aadhar Card; however, the Respondent – Authorities refused to accept the candidature. The Respondents have relied upon the order passed by the Division Bench of this Court in the case of Manish Kumar Verma Son of Fulan Prasad Verma Vs. Union of India and Ors.[Writ Petition No. 964 of 2023 dated 23 February 2023] and reference is made to the order passed by the Central Administrative Tribunal based on which it is contended that necessary documentation is not submitted as per cutoff date including that of proof of age, the candidate would not be eligible. This decision, however, do not arise from the case of a person with disabilities, more particularly, those who are 100% visually impaired. Again, no distinction is sought to be made between the regular candidate and person with serious visual impairment.

13. According to Clause 5.0 of the General Instructions in the Notification, the age limit provided is 18 to 33 years. Taking the date of birth of the Petitioner as 10 January 1992, the Petitioner's age is 26 years. Based on the date of birth of the Petitioner as 10 January 1993, the Petitioner's age would be 27 years. Therefore, irrespective of either of these dates, the Petitioner falls within the prescribed age limit and is not barred by age. There is no dispute before us that the Petitioner is duly qualified and eligible and holds a valid certificate as person with disability.

14. The concept of fairness in dealing with person with disabilities is not only of treating them equal with others but of an affirmative action. The Supreme Court observed in Jeeja Ghosh and Another Versus Union of India and Others (2016) 7 SCC 761 that the key aspect of fairness is understanding that different individuals have varying needs, particularly those with disabilities. The Supreme Court, in the case of Vikash Kumar Versus Union Public Service Commission and Others (2021) 5 SCC 370, elaborated the principle of Reasonable Accommodation, which entails providing additional support and facilities to persons with disabilities. Simply stating that discrimination against persons with disabilities is prohibited is insufficient. Additional support is required to mitigate

the impact of disabilities. The principle of Reasonable Accommodation in Section 3 of the Rights of Persons with Disabilities Act, 2016 (the Act of 2016) mandates both supplementary support to individuals with disabilities and facilitating their complete integration into society. This principle rises above the mere prohibition of discrimination. It means the proactive creation of conditions conducive to the person with disabilities. Reasonable Accommodation implies that the needs of individuals with disabilities must be acknowledged and remedied to a reasonable extent, respecting their differences and facilitating their full participation in all facets of life. The accommodations provided by law must be "reasonable" and tailored to the specific needs of each individual. Failing to meet the unique requirements of individuals with disabilities would contravene the principle of reasonable accommodation.

15. The stand taken by the Respondents that they are bound by the clause of advertisement to apply it uniformly and inflexibly and they therefore cannot remedy the situation, in spite of Court calling upon them to do so, overlooks the responsibility to treat persons with disabilities differently. The legislation for the disabled should not merely remain in the statute book; rather, the spirit behind the legislation must be applied by all authorities in its practical application showing appropriate sensitivity and flexibility. Individuals such as the Petitioner, who are 100% visually impaired, cannot be expected to stand on equal footing with other candidates in terms of usual activities. Unless there is evidence of fraud, misrepresentation, or basic ineligibility, reasonable efforts should be made to modify the procedures to align with the objectives of the legislation. The Act of 2016 not only mandates ensuring equal opportunities for people with disabilities but also making necessary adjustments to meet their specific needs. Visually impaired individuals may make mistakes, such as typing errors, due to their impairment or may need to rely on others. These errors, stemming from their disability, should not result in discrimination or unfair treatment by employers. Rejecting the applications and then refusing to remedy the mistakes even within a reasonable time solely because of these errors, would contravene the principle of equality. Employers should ensure that minor mistakes due to disabilities do not lead to serious consequences such as loss of job opportunity itself. Respondents do not contend the mistake by the Petitioner was deliberate or intended to achieve a certain end. By refusing to acknowledge that the case of the Petitioner, a person with benchmark disability, needs to be handled with sensitivity and flexibility in the procedure, the Respondents have failed to discharge its obligation under the Act of 2016.

16. We therefore find that the rigid stand taken by the Respondents is unduly oppressive and harsh and violates the objective of the Act of 2016. The Hon'ble Supreme Court, in the decision in *Justice Sunanda Bhandare Foundation v. Union of India and Another* (2014) 14 SCC 383 has commented on the lack of sensitivity in implementing the provisions of the Act (then of 1995), as under:

"9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed

to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.

(emphasis supplied)

This observation squarely applies to the position at hand.

17. As an extension of the pedantic stand, Respondents also contended that the matter is related to service with the Union of India, and the Petition should be dismissed on the grounds of an alternate remedy to approach the Central Administrative Tribunal. The Respondents have relied on the decision of this Court in the case of Gaurav Ganesh Das Daga & Ors. V/s. Maharashtra Public Services Commission & Anr. and others Writ Petition No. 2270 of 2021 dated 4 March 2022 following the decision in the case of L.Chandra Kumar Versus Union of India and Others (1997) 3 SCC 261 . Even this argument does not make any reference to the Act of 2016. The Petitioner is not only raising a dispute regarding services with the Union of India but also seeking enforcement of the rights and obligations under the Act of 2016. Furthermore, it is as far back as August 2023 that this Court entertained the Petition and directed that one post be kept vacant. This order has not been challenged by the Respondents-Authorities. The result is that the Petition has remained pending after taking cognizance by this Court, and the interim order has continued for almost six months. Even if the Petition is to be dismissed for the Petitioner to approach the Central Administrative Tribunal, this Court may continue the direction to keep the post vacant, and this position would not enure to the benefit of either party. No decision is placed before us by the Respondents-Authorities even in such a situation, the Court should not exercise jurisdiction under Article 226 of the Constitution of India. In the facts and circumstances of the case, declining to exercise writ jurisdiction would result in failure of justice and would defeat the spirit behind the Act of 2016.

18. Accordingly, the rejection of the Petitioner's candidature is set aside. Respondent No.2, Railway Recruitment Cell, is directed to process the candidature of the Petitioner for the post of Assistant as per the Advertisement No. CEN RRC- 01/2019 within six weeks from today.

19. Rule is made absolute in the above terms.

20. The Writ Petition is accordingly disposed of.

21. No order as to costs.