

(2015) 12 CHH CK 0012
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 97 of 2010

Shree Deo Diwedi

APPELLANT

Vs

Chhattisgarh Public Service Commission and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

General Clauses Act, 1897 — Section 20
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2015) 12 CHH CK 0012

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Amrito Das, Advocate, for the Appellant; Y.C. Sharma, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J.—Stellar issue that has cropped up for consideration is whether Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 and the proviso appended thereto with regard to making reservation for persons with disability, is mandatory in nature.

2. The petitioner is a doctor holding degree of B.A.M.S. and a differently abled person. He applied to be considered for the post of Ayurved Chikitsa Adhikari on an advertisement issued on 28-5-2008 against nine posts of unreserved physically handicapped category. He was allowed to appear in the written examination and also he was allowed to appear in the interview, but when the final result was announced, his name did not figure in the final select list and later-on he was informed that on account of his hearing impairment, he was found ineligible for the post of Ayurved Chikitsa Adhikari and, therefore, he is not entitled to be considered for the said post.

3. Feeling aggrieved and dissatisfied with the action of respondents No. 1 & 2,

the petitioner herein filed this writ petition stating inter alia that the quota having been earmarked against unreserved handicapped person, he is entitled to be considered, as there is no notification issued under the proviso to Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (for short "the Act of 1995") by the appropriate Government exempting the recruiting authority from making reservation for persons suffering from hearing impairment, therefore, the action of respondents No. 1 & 2 declaring him ineligible and disqualified be quashed.

4. The respondent PSC has filed return stating inter alia that the State Government has issued a circular on 21-12-2009 authorizing the particular Department to pass an order under Sections 32 & 33 of the Act of 1955 and in exercise of that circular, the Department of Health and Family Welfare in its memo dated 23-10-2007 had sent a requisition to the PSC in which the category of disability has been provided which includes that person with hearing impairment and disability of senses will not be eligible. Therefore, the PSC is bound by the said requisition/class mentioned by the State Government as such, the petitioner has rightly been held to be disqualified from being considered on the post of Ayurved Chikitsa Adhikari.

5. The State has adopted the return filed by the PSC.

6. Respondents No. 3 to 11 have not filed any return.

7. Mr. Amrito Das, learned counsel appearing for the petitioner, would submit that by virtue of Section 33 of the Act of 1995, every "appropriate Government" has to make reservation for persons suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy and post has to be identified for each disability. He would further submit that in accordance with the proviso to Section 33 of the Act of 1995, a notification has to be issued by the appropriate Government exempting any establishment from complying with the proviso to Section 33, having regard to the type of work carried on in the department or establishment and that must be by a notification duly published in the Official Gazette. In the present case, no such notification has been issued by the appropriate Government/State Government exempting the present recruitment from complying with the provisions of Section 33 of the Act of 1995 and, therefore, the action of respondents No. 1 & 2 is highly arbitrary and inappropriate and is liable to be quashed.

8. Mr. Avinash Singh, learned Panel Lawyer appearing for the State/respondent No. 2, would submit that the State Government has issued order dated 21-12-2009 in which the State Government has authorized particular department seeking selection on particular post to pass order under Sections 32 & 33 of the Act of 1995, and in exercise of that authorization, the Department of Health and Family Welfare in its requisition dated 23-10-2007 has clearly held that persons suffering from disability of senses and locomotor disability will not eligible to be considered for the post of Ayurved Chikitsa Adhikari and, therefore, the order

passed by the PSC based on the requisition of said Department is strictly in accordance with law and the writ petition deserves to be dismissed.

9. Mr. Y.C. Sharma, learned counsel appearing for the PSC, would take the same stand and submit that acting upon the requisition holding persons suffering from disability of senses to be ineligible by the State Government, the petitioner has been held to be disqualified for the post of Ayurved Chikitsa Adhikari and as such, the writ petition deserves to be dismissed.

10. I have heard learned counsel for the parties and given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

11. The Act of 1995 has been enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. It has come into force with effect from 7-2-1996.

12. Before proceeding further, it would be pertinent to note the following observation made by Their Lordships of the Supreme Court in the matter of Bhagwan Dass and Another Vs. Punjab State Electricity Board, which aptly applies to the facts of the present case and in which it has been held that the denial of rights of physically disabled persons is unjust and unfair and it would create problem for the society. It has been held as under: -

"... From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as an other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as equal citizens of the country."

13. In a more recent judgment in the matter of Union of India (UOI) and Another Vs. National Federation of the Blind and Others, , Their Lordships of the Supreme Court highlighting the social object sought to be achieved by the Act of 1995, particularly Section 33 of the Act, held as under: -

"23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

37. Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor disability or cerebral palsy.

50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various international treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today."

14. At this stage, it would be appropriate to notice Section 33 of the Act of 1995. Section 33 of the Act of 1995 provides as under: -

"33. Reservation of posts.--Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from--

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

15. A meaningful reading of the aforesaid provision would show that reservation has to be made by the appropriate Government to the extent of not less than three percent of vacancies for appointment of persons or class of persons with

disability of which one per cent each has to be reserved for persons suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy, and in order to exempt from such reservation, a notification has to be issued by the appropriate Government and it has to be duly published in the Official Gazette.

16. Notification with reference to Central Act is defined in Section 20 of the General Clauses Act, 1897. Section 20 of the General Clauses Act, 1897 reads as follows: -

"20. Construction of orders, etc., issued under enactments.--Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power."

17. In the matter of Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra, , the Supreme Court has held that "notification" in common English acceptation mean and imply a formal announcement of a legally relevant fact and "notification published in Official Gazette" means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.

18. Similar is the proposition in National Federation of the Blind's case (supra) rendered by Their Lordships of the Supreme Court in which it has categorically been held that the appropriate Government has to issue a notification exempting any establishment either partly or fully from the purview of the above stated provision by notification duly published in Official Gazette, and observed as under: -

"The proviso also justifies the abovesaid interpretation that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. Had the legislature intended to mandate for computation of reservation against the identified posts only, there was no need for inserting the proviso to section which empowers the appropriate Government to exempt any establishment either partly or fully from the purview of the section subject to such conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts."

19. From the aforesaid legal analysis, it is quite vivid that Section 33 of the Act of 1995 requiring reservation in favour of person with disability and the proviso appended to Section 33 of the Act by which the appropriate Government may be exempted from complying with the provisions of Section 33 of the Act keeping in

view the type of work to be executed in any Department or establishment by notification duly published in the Official Gazette, are mandatory in nature.

20. Determination of the aforesaid issue leads me to advert to the question whether the State Government has issued any notification in exercise of the proviso to Section 33 of the Act of 1995 read with Section 20 of the General Clauses Act, 1897 exempting the present recruitment for the post of Ayurved Chikitsa Adhikari complying the provisions of Section 33 of the Act of 1995.

21. The respondent PSC as well as the State has brought out an administrative order of the State Government in which the State Government has authorized respective departments seeking selection against vacancies in particular posts to make orders with regard to Sections 32 & 33 of the Act of 1995 pursuant to which the Department of Health and Family Welfare has made a stipulation in the requisition form itself while making requisition to the PSC. There is no notification brought on record having been issued in exercise of power conferred under the proviso to Section 33 of the Act of 1995 duly published in the Official Gazette exempting from making reservation for the post of Ayurved Chikitsa Adhikari for a person suffering with hearing impairment.

22. Similar question came up before the Supreme Court in the matter of Govt. of India through Secretary and Another Vs. Ravi Prakash Gupta and Another, in which Their Lordships of the Supreme Court have held the action of the Government unjustified in absence of any exemption under Section 33 of the Act of 1995 and observed as under:--

"26. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Groups A, B, C and D posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners."

23. Accordingly, it is held that respondent No. 2 - State Government have failed to demonstrate the exemption from reservation of post for the person suffering with disability i.e. hearing impairment by notification duly published in the Official Gazette in this behalf under the proviso to Section 33 of the Act of 1995. Therefore, the action of respondents No. 1 & 2 holding the petitioner to be disqualified for the post of Ayurved Chikitsa Adhikari against the unreserved physically handicapped quota is declared illegal and inoperative.

24. It is stated at the Bar that the petitioner has participated in the interview also, but the result was not declared. Respondents No. 1 and 2 are directed to declare the result of the petitioner forthwith and pass consequential orders with regard to the petitioner within three weeks from the date of receipt of a certified copy of this order.

25. Accordingly, the writ petition is allowed to the extent indicated herein-above.
No order as to costs.