
(2017) 03 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C). No. 2(K) of 2013

Shri. Chichuse Kajiri

APPELLANT

Vs

The State of Nagaland

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 376

Hon'ble Judges : Mr. S. Serto, J.

Bench : Single Bench

Advocate : Mr. D. Stephen, Mr. K. Yanthan, Mr. K.L. Solo and Ms. Alemla, Advocates, for the Petitioner; Ms. V. Chishi, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. S. Serto, J. (Oral)—Heard Mr. K.L. Solo, learned counsel for the petitioner and also heard Ms. V. Chishi, learned Government Advocate appearing for the State respondents.

This is a writ petition filed by a person who is admittedly suffering from locomotor disability praying for issuance of a writ in the nature of Mandamus or any other appropriate writ or order(s) or direction(s) against the respondents to appoint him as Primary Teacher in the disability quota.

The case of the petitioner as submitted by the learned counsel for the petitioner is that by advertisement dated 09.12.2011, Government of Nagaland invited applications for appointment to the post of 1190 Primary Teachers in the Government Schools of Nagaland. And in that advertisement, it was mentioned that 3% of the vacancies in the posts of Primary Teacher would be reserved for persons with the following disabilities :-

- (i) Blindness with low vision,
- (ii) Hearing impairment and

(iii) Locomotor disability or Cerebral Palsy

The advertisement also further mentioned that one percent will be reserved for each person with disabilities :-

(i) Blindness with low vision,

(ii) Hearing impairment and

(iii) Locomotor disability or Cerebral Palsy

The petitioner being a Graduate in Humanity, therefore, eligible applied for the job. The respondents conducted the written examination on 22.01.2012 and the petitioner appeared the same and he was also declared one of the candidates who qualified for viva-voce to be held on 15.05.2012. The petitioner, accordingly, appeared before the Interview Board duly constituted. While waiting expectantly for the result, to his surprise, he was declared not selected. Being shocked and surprise, an RTI was submitted to the Public Information Officer of the District Education Officer, Phek District, Phek to inquire about the reason why he was not selected. In reply to the RTI application dated 17.05.2012, the District Education Officer, Phek District, Phek vide his letter dated 09.06.2012 informed the petitioner that he was not recommended by the District Selection Board mentioned on the ground that he moves only on a wheel chair, therefore, he is not suitable for the post of teacher. Being aggrieved, the petitioner has come to this Court praying for intervention of this Court on the grounds submitted as follows :-

2. That the Government of Nagaland, has so far issued only two Notifications regarding the State Government's Policy to reserve certain percentage of vacancies in the case of the disabilities. The first Notification is dated 19.08.2004. According to the learned counsel for the petitioner the first notice provided for reservation of 5% of the vacancies for persons with the disabilities.

The Notification reads as follows :-

"Government of Nagaland

Department of Personnel and Administrative Reforms

(Administrative Reforms Branch)

Notification

Dated Kohima, the 19th August, 2004 No. AR-3/Gen-9/97: In pursuance of Section 33 read with Section 32 of the Central Act called the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter the Act), the Governor of Nagaland is pleased to reserve, with immediate effect, five percent of vacancies in the posts enumerated in the Schedule to this Notification, meant for direct recruitment in the Government of Nagaland and its Public Undertakings in favour of persons with the following disabilities:

- (i) blindness;
- (ii) low vision;
- (iii) leprosy cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation; and
- (vii) mental illness.

2. Of the five percent vacancies so reserved for person with disabilities, one percent each will be reserved for the following in the orders shown below, and the rest will be reserved for persons with all categories of disabilities :

- (i) blindness with low vision;
- (ii) hearing impairment; and
- (iii) locomotor disability or Cerebral Palsy

3. The disabilities enumerated in paragraphs 1 and 2 above will have the same definitions provided to them in the Act.

4. Until the posts in the Government of Nagaland or its Public Undertakings are identified for reservation for the persons with disabilities as per section 32 of the Act, and until the departments and establishments in the Government of Nagaland or its Public Undertakings which are required to be exempted from such reservation as per proviso to Section 33 of the Act,

(i) all advertisements for direct recruitment to posts in the Schedule in this Notification in the Government of Nagaland and its Public Undertakings shall carry a notice that 5% of the vacancies are reserved for person with disabilities enumerated in paragraph 1 of this Notification;

(ii) all applications should contain a specific column for the candidates to state that they are persons with a particular disability as enumerated in paragraph 1 of this Notification; and

(iii) when such applicants with the disability qualify the examination or interview or both or any other test meant for direct recruitment to posts concerned, on general standards, will be subjected to examination by a Special Medical Board constituted for the purpose to certify that the disability they suffer will not hinder the work they ought to perform after their requirement; if the Special Medical Board certifies them in this regard, subject to other verifications normally done, they are entitled to be appointed, if not, they shall not be appointed.

The manner in which reservation of 5% of posts for persons with disabilities in the Government of Nagaland and its Public Undertakings will be executed, will be

guided by the principles laid down by the Supreme Court of India and the Union Ministry of Personnel, Public Grievances and Pensions. There shall be no carry forward of vacancies in case the quota is not filled in a year.

Encl: Schedule

Sd/- V.N. GAUR

Principal Secretary to the Govt. of Nagaland

Schedule to the Notification

1. LDA (Secretariat, Directorate, District)
2. Typist (Secretariat, Directorate, District)
3. Planning Assistant
4. Statistical Assistant
5. Technical Assistant
6. Junior Divisional Accountant
7. Lab. Assistant
8. Assistant Librarian
9. Assistant Teachers
10. Supervisors
11. Instructors
12. Store keepers
13. Inspector of Co-operatives
14. Draughtsman
15. Telephone Operator
16. Peon
17. Jamadar
18. Chowkidar
19. Mali
20. Sweeper
21. Cook."

Thereafter, another Notification dated 16.01.2008 was issued by the State Government wherein the percentage of reservation for persons suffering from physical disabilities has been changed from 5% to 3%.

3. According to the learned counsel for the petitioner the Schedule attached to the Notification dated 19.08.2004 has not been changed and the same remains applicable as far as the kind or category of jobs in which persons suffering from physical disabilities can be appointed is concern.

The learned counsel drew my attention to Sl. No. 9 of the schedule wherein Primary Teacher is mentioned and which is the name of post for which the petitioner applied and faced the interview. The learned counsel submitted that the petitioner has passed the written examination for the job of Assistant Teacher as mentioned in the Schedule to which a person suffering from locomotor disability or Cerebral Palsy can be appointed. Therefore, there is no reason why the petitioner should not be appointed to one of the vacancies of primary Teacher for which the competitive examination was held.

The learned counsel also submitted that the Schedule of the Notification dated 16.02.2008 filed by the respondents is not the Schedule published by the State Government in respect of reservation for persons suffering from disability in Government services, therefore, the same cannot be relied upon while considering the case of the petitioner.

4. Ms. V. Chishi, learned Government Advocate who appears on behalf of the State respondents fairly admitted that this Schedule appended to the Notification filed by the respondents is not published in Government gazette or notified.

I have gone through the two Notifications mentioned above, there is no difference between the two except in the number of percentage of posts to be reserved for persons suffering from disability. Since there is no other Schedule published or notified by the State Government the one appended to the Notification dated 19.08.2004 has to be accepted as the only Schedule that will guide the recruitment authorities. It is apparent from the Notification and the Schedule appended thereto that a person suffering from locomotor disability like the petitioner can also be appointed to the post of Primary Teacher.

5. At para-5 of the Notification dated 16.01.2008, it is mentioned that "when such applicants with the prescribed disability qualify such examinations or interview or both or any other test meant for direct recruitment to posts concerned, on general standards, will be subjected to examination by a State Medical Board constituted for the purpose to certify that the disability they suffer will not hinder the work they ought to perform after their recruitment. If the State Medical Board certifies them in this regard, subject to other verifications normally done, they are entitled to be appointed, if not, they shall not be appointed." In view of this provision given in the Notification, the petitioner will have to go through the Medical Board duly constituted by the State Government for the purpose.

6. In reply to his RTI, the petitioner was informed that he was not selected because of his inability to move without the help of a chair. This implies that the petitioner was otherwise qualified as far as his knowledge on the subject and

other requirements are concerned. Therefore, this Court has no difficulty in coming to the conclusion that the petitioner is qualified for the post.

7. In view of what has been stated above, the respondents are directed to declare the result of the viva-voce of the petitioner based on his knowledge of the subject and other requirements and sent him for examination by Medical Board duly constituted for the purpose. And thereafter, appoint him to the post of Primary Teacher if found fit for the same by the Medical Board.

8. With this, the writ petition is disposed.