

(2010) 09 CAL CK 0097
In the Calcutta High Court
Case No : Writ Petition No. 13909 (W) of 2010

Sri. Nimai Adhikari

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Cantonments Act, 1924 — Section 32, 33, 38, 39
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2

Citation : (2011) 1 CALLT 615 : (2011) 2 CHN 737

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Sudip Sanyal and S. Das, for the Appellant;Tulsidas Maity, Taraprasad Halder and Saikat Banerjee, for State, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—The writ Petitioner is one hundred percent visually impaired and with such disability he passed the Madhyamik Examination in the year 1988, obtaining a total of 438 marks and securing a second division. Opting to integrate himself into the mainstream society, he took the opportunity to respond to a public advertisement for filling-up of posts of assistant primary teachers, through a recruitment process initiated by the District Primary School Council, Paschim Midnapore. He did so by duly filling-up the prescribed application form and declaring himself to be a physically challenged candidate. Consequently, the Petitioner received his admit card for appearing in a written examination which was a part of the recruitment process and was even allowed to get the help of an amanuensis to complete the said examination. The writ Petitioner obtained sixteen marks out of a total of thirty marks in the said written examination and was thereafter asked to appear before the interview board. He duly appeared before the interview board and was successfully empanelled on merit of his performance.

2. A draft panel was, thereafter, prepared by the District Primary School Council, Paschim Midnapore. However, before the draft panel was sent for approval to the office of the Director of School Education, Government of West Bengal, a representative from that office visited the office of the District Primary School Council, Paschim Midnapore and instructed its Chairman to strike out the name of the writ Petitioner, citing a memo, bearing No. 1154/Com dated 29th November, 2006, issued by one S. Gupta, Commissioner (Disabilities) West Bengal, a copy whereof may be kept on record.

3. The issue that now comes up for consideration is whether the above memo can operate as an embargo and/or fetter and stand in the way of the writ Petitioner - who is, admittedly, one hundred percent visually impaired - from being considered as a suitable candidate for filling-up of the vacant post of an assistant primary school teacher, after being successful in the recruitment process.

4. For convenience, the said memo dated 29th November, 2006, is reproduced in its entirety hereinbelow:

Memo No. - 1154/com dated 29th Nov 2006

To

The Director of School Education

West Bengal

Bikash Bhawan, Salt Lake City,

Kolkata -700091

Sub-Selection of 100% VH for appointment to the Post of Primary School Teachers.

Ref-Memo NO-1976-SC/P/7P-69P-1994 dt-24/11/2006.

Sir.

Please refer to the above. The identification of posts and jobs is being done as per the list of posts suggested to be filled in by persons with disabilities from the Govt, of India in the Ministry of Social Justice and Empowerment. Serial Number 62 and 63 of the Appendix-I showing reservation of jobs identified for Group-C show as follows:

Name of the Post Physical Requirements Categories of Disabled suitable for the Jobs

1) Primary School Teacher Seeing, Hearing. Fingering Sitting One Leg. Both legs Muscular Weakness and One Arm

2) Primary School Teachers, Other Do Do

The suggestions as shown above are generally abided by various authorities of the State.

Yours faithfully,

(S. Gupta)

Commissioner (Disabilities) WB

5. Before this Court goes into the question of applicability of the above memo in the facts and circumstances of the instant case, it is perhaps necessary to advert to the public advertisement on the strength of which the writ Petitioner participated in the recruitment process initiated by the District Primary School Council, Paschim Midnapore.

6. In the public advertisement published in various leading newspapers, including "The Statesman" on 30th August, 2009, it was categorically stated, inter alia, as follows:

1. No. of vacancies: Genl.-2168, SC-774, ST-206, OBC-310, EC-1116, Ex-Serviceman-279, PC-167.

...

...

4. Age: Not less than 18 years and less than 40 years as on 01/01/2009.

...

...

Upper age limit is relaxable by 5 years for SC and ST candidates of West Bengal, 3 years for OBC candidates of West Bengal and upto 45 years for Physically Challenged (PC) persons with physical disability of 40% and above...

7. A bare perusal of the public advertisement, relevant portions whereof have been quoted hereinabove, clearly goes to show that the District Primary School Council, which is a statutory body, had consciously kept reserved posts for such candidates like the writ Petitioner, who were physically challenged. What is even more apparent is that those candidates who suffer from physical disability of forty percent and above were to get an additional upper-age relaxation of five years.

8. One may, at this point of time, ponder as to the reason why such reservation was provided for in the first place. The answer to this lies in a central statute which has come into force almost a decade and a half ago, namely, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as "the Act"). The Act was made enforceable on and from 7th February, 1996. The genesis of this statute lies in a meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by

the Economic and Social Commission for Asia and Pacific Region, which was held at Beijing between 1st and 5th December, 1992, where the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific Region was adopted. India, being a signatory to the said Proclamation decided to give full effect to the same by bringing about this legislation. The Proclamation, inter alia, called for enactment of a suitable legislation to provide for the following:

- i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- ii) to create barrier free environment for persons with disabilities;
- iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;
- iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- vi) to make special provision of the integration of persons with disabilities into the social mainstream.

9. Some of the provisions of the Act which are based on the above proclamation, are discussed hereunder.

10. Section 2 of the Act provides for statutory definitions, which includes, inter alia:

(a) "appropriate Government" means,-

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

(iii) in respect of the Central Coordination Committee and the Central Government Executive Committee, the Central Government;

(iv) in respect of the State Coordination Committee and the State Executive Committee, the State Government;

(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;

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(i) "disability" means -

i) blindness;

ii) low vision;

iii) leprosy-cured;

iv) hearing impairment;

v) locomotor disability;

vi) mental retardation;

vii) mental illness;

11."Chapter-V of the Act provides, inter alia, various provisions to be applied by the appropriate government and the local authorities for providing children with disabilities, free education and for making various schemes and programmes for non-formal education to imparted to such children. This includes initiation of research for designing and developing new assistive devices, teaching aids, etc., by the appropriate governments as well as setting-up of teachers training institutions for developing trained manpower for schools for children with disabilities. Chapter v. also makes it mandatory for educational institutions to provide amanuensis to students with visual handicap.

12. Under Chapter-VI of the Act, which is in respect of providing employment of those persons with disabilities, Sections 32, 33, 38 and 39 reads as under:

32. Identification of posts which can be reserved for persons with disabilities

Appropriate Government shall-

a) identify posts, in the establishment, which can be reserved for the persons with disability;

b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts

Every appropriate Government shall appoint in every establishment such

percentage of vacancies not less than three per cent. For persons for class of persons with disabilities 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 post 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, except any establishment from the provisions of this section.

38. Schemes for ensuring employment of persons with disabilities

(1) The appropriate Governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for -

(a) the training and welfare of persons with disabilities;

(b) the relaxation and welfare of persons with disabilities;

(c) regulating the employment;

(d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;

(e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and

(f) constituting the authority responsible for the administration of the scheme.

39. All educational institutions to reserve seats for persons with disabilities

All Government educational institutions and other educational institution receiving aid from the Government, shall reserve not less than three per cent, seats for persons with disabilities.

13. The general scheme of the Act, portions of which have been quoted hereinabove, empowers appropriate Governments and authorities, as described u/s 2(a), to provide persons with disabilities as defined u/s 2(i), equal opportunities, protection of their rights and their full participation in order to meet the objects and reasons of the statute. It endeavours to remove all barriers of discrimination in respect of all those persons and integrate them with the mainstream society, rather than keeping them isolated at a distance and treating them as a class apart. In essence, the statute makes a positive effort to promote equality of status and of opportunity, as enshrined in the preamble of our Constitution, in respect of those persons with such disabilities.

14. It appears that the Commissioner (Disabilities) West Bengal, while issuing the memo dated 29th November, 2006, completely lost sight of the Act and the relevance of its scheme, as observed hereinbefore. The mandate of the statute, with regard to reservation of seats for persons with disabilities in all educational institutions, as provided u/s 39 of the Act, has simply been ignored by the Commissioner (Disabilities), West Bengal, while issuing the said memo. It appears that the Commissioner (Disabilities) West Bengal, is also quite oblivious to the provisions contained in the preamble of our Constitution, wherein equality of status and of opportunity has been specially provided for and the Act merely strives to provide such equality. The suggestions of the Commissioner (Disabilities) West Bengal, as stated in his memo dated 29th November, 2006, are, therefore, on the face of it, contrary to the law of the land. The Director of School Education, Government of West Bengal, could not have and cannot rely on the said memo of the Commissioner (Disabilities) West Bengal, dated 29th November, 2006, while considering grant of approval of appointment for those candidates who participated in the recruitment process and were successful and who suffer from such disabilities as defined u/s 2(i) of the Act. The said memo dated 29th November, 2006, cannot stand the test of judicial scrutiny and is liable to be set aside and quashed and is hereby set aside and quashed.

15. The writ-petition is disposed of with a direction upon the Director of School Education, West Bengal, to take appropriate steps in the matter and grant approval in favour of the writ Petitioner, subject to the condition that he conforms to all other requirements, necessary for the purpose of securing his appointment in accordance with the relevant recruitment rules and upon his name being forwarded by the concerned Council. It is expected that the Director of School Education, West Bengal, shall take such steps in the matter as expeditiously as possible, preferably within a period of four weeks, but not later than six weeks from the date of receipt of the name of the Petitioner from the office of the District Primary School Council, Paschim Medinipur. The Chairman of the District Primary School Council, Paschim Medinipur is directed to forward the name of the writ Petitioner within a fortnight from date of communication of a photostat certified copy of this order to the office of the Director of School Education, Government of West Bengal.

16. In the event, the Director of School Education, West Bengal, grants approval in favour of the writ Petitioner, the Chairman of the concerned Council shall issue necessary appointment letter in favour of the writ Petitioner within a week therefrom.