

(2013) 11 AHC CK 0147

In the Allahabad High Court

Case No : Special Appeal Defective No. 1207 of 2013

State of U.P. and Others

APPELLANT

Vs

Deenanath Pandey

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 747 : (2014) 1 ALJ 485 : (2014) 102 ALR 201 : (2014) 2 AWC 1393 : (2014) 1 ESC 311 : (2014) 140 FLR 553 : (2014) 3 SCT 418 : (2014) 1 UPLBEC 524

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : A.K. Goyal, for the Appellant; Siddharth Khare, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri A.K. Goyal, Additional Chief Standing Counsel for the appellant. Shri Ashok Khare, Senior Counsel assisted by Shri Siddharth Khare appears for the petitioner-respondent. The appeal is reported to be beyond time by 88 days. There is no serious objection to the grounds taken in the application for condonation of delay. We also find that the explanation for condonation of delay is good and sufficient. The application for condonation of delay is allowed. The matter was heard.

2. The petitioner-respondent is a differently abled person with hearing impairment of more than 45%. He applied in pursuance to the advertisement for selection as Village Development Officer on the post reserved for Physically Disabled Persons under the U.P. Public Services (Reservation for Physically Disabled, Dependent of Freedom Fighters and Ex-Servicemen) Act, 1993 providing for 3% reservation for physically disabled persons, which includes the persons with hearing impairment. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 provides for hearing impairment of 45% to be categorised as physically disabled person suffering with hearing impairment for receiving consideration for appointment in

the quota reserved for physically handicapped persons.

3. In all 14 persons applied in the category of physically disabled persons with 45% hearing impairment for selections. All the candidates, who had appeared in the selections as physically disabled persons had obtained certificates from the Chief Medical Officers of their respective districts of their qualifying disability for being considered for the category reserved for physically handicapped persons. The interview board, however, found it appropriate to get all the candidates examined again by the Medical Board at King George Medical University, Lucknow (KGMU) vide letter dated 21.3.2013 issued by Joint Commissioner, Rural Development, U.P. Lucknow.

4. In paragraph 4 of the judgment learned Single Judge has referred to the facts relating to the tests carried out by KGMU (Deptt of ENT) as follows:

4. It is said that nine candidates were examined alongwith the petitioner on 22.3.2013 out of which six were rejected and only petitioner as also two others, namely, Amit Gupta and Deep Prakash Sinha were found to be genuine cases of hearing impairment and were recommended accordingly. Again on 30.3.2013, Joint Commissioner, Rural Development issued a fresh letter directing the petitioner to appear before a District Physically Handicappedness Board constituted by Chief Medical Officer, Lucknow for fresh examination/verification of his physically handicapped certificate and if petitioner's certificate is found correct, he was again required to appear for interview on 13.4.2013. Thereafter, public notice was issued postponing the interview scheduled for 13.4.2013. On 16.4.2013, the Assistant Commissioner, Rural Development issued a letter directing the petitioner to appear before Medical Board in the Office of Chief Medical Officer, Lucknow on 20.4.2013 for examination of his physical impairment. Complying the same, petitioner appeared before Medical Board on 20.4.2013 alongwith his physically handicapped certificate wherein they did not find anything wrong in the certificate, but advised the petitioner for Repeat PTA, BERA and Speech Audio at KGMU, Lucknow. Then Joint Director, Rural Development sent a letter dated 26.4.2013 requiring the petitioner to get himself examined at KGMU, Lucknow in the light of the Chief Medical Officer, Lucknow's report dated 24.4.2013 and thereafter submit examination report of KGMU, Lucknow to the Medical Board in the Office of Chief Medical Officer, Lucknow. Perturbed by this repeated examination without any substance, petitioner made representations dated 3.6.2013 and 19.6.2013 protesting against the aforesaid attitude of respondents stating that in absence of any substantive material to doubt the statutory certificate produced by petitioner, he cannot be subjected to repeated test so as to cause unnecessary embarrassment and harassment to him. Having seen no further action on the aforesaid representations, this writ petition has been filed.

5. Learned Single Judge, in his judgment dated 31.7.2013 under challenge in this Special Appeal, held that once the initial certificate dated 30.10.2012 issued by the Chief Medical Officer, Siddharth Nagar was not found to be incorrect by

another Medical Board constituted by the respondents, which had examined the petitioner in the office of Chief Medical Officer, Lucknow on 20.4.2013, and that the petitioner was also examined at KGMU and that nothing wrong was found in the certificate issued by the CMO, the persistence, on the part of the respondents to go for another specialised examination, is nothing but harassment and embarrassment to a person, who has already suffered disability. He allowed the writ petition, quashed the notices dated 26.4.2013, 28.5.2013, 5.6.2013 and 19.6.2013, and has directed the respondents to treat the petitioner as a physically handicapped person (hearing impairment), and to consider him for appointment on the post of Gram Vikas Adhikari pursuant to advertisement dated 19.12.2013.

6. Shri A.K. Goyal, appearing for the appellant submits that if the employer wants to be satisfied that the person is suffering from the physical disability, which will make him eligible to be included in the reserved category, the Court should not have interfered. The Interview Board simply insisted upon a further test to be conducted to verify whether the respondent-petitioner was suffering from disability of hearing impairment at 45%. The Medical Board of KGMU had found the certificates of 2 out of 9 persons to be incorrect. In respect of seven, it recommended a specialised test of BERA for the purpose of finding out the accurate hearing loss. The Court interfered with the discrimination of the experts opinion, in holding that the respondent is physically handicapped person (with 45% hearing impairment). The Court should not ordinarily interfere in the enquiry made by the employer for the purpose of verifying the eligibility for appointment in the category of physically disabled person.

7. Shri Ashok Khare, on the other hand, submits that the petitioner had made a complaint that he has been subjected to test again and again. This was the 4th time that he was asked to go for medical test. There was absolutely no reason to disagree with the report of the CMO dated 30.10.2012. The experts of KGMU did not find that the certificate given by the CMO Siddharth Nagar dated 30.10.2012 was incorrect and thus any further examination was not necessary.

8. In the present case the record shows that the petitioner had produced the certificate of CMO certifying that he was differently abled person suffering from hearing impairment of 45% and was thus entitled to be considered for appointment in the reserved category for physically handicapped persons under the Act of 1993. The Interview Board had no reason to disbelieve the certificate given by the Chief Medical Officer, Siddharth Nagar dated 30.10.2012. The petitioner, however, complied with the directions issued by the Interview Board and appeared before the Medical Board of KGMU. No reason was given to disagree with the reports of CMO and KGMU, and to be sent to the Medical Board constituted by CMO, Lucknow for fresh examination. The petitioner, not in a position to protest, again appeared before Medical Board in the office of CMO on 20.4.2013. He was not disqualified and was found to be suffering from hearing loss in the right year at 57.5% and left year at 61.25% in the radiometry report.

No reason was given by the experts of ENT in the Medical Board in their report dated 20.4.2013 to subject him to further specialised tests known as "BERA" for verifying the hearing impairment. We find that when the experts had subjected them to tests and in which the petitioner was not found to be suffering from hearing impairment of less than 45%, there could be no reason to subject him further to a specialised test.

9. We are of the view that the Interview Board was subjecting the candidates, who had applied in the category of physically disabled persons, to gross humiliation. The certificate given by the Chief Medical Officer, who is the competent authority to issue such certificate could not be disbelieved by the Interview Board on the ground of suspicion unless there was any material to disagree with the reports of CMO and KGMU. We also find that since the Medical Board of KGMU found the certificate of 9 out of 14 persons to be incorrect, no fault can be found with Interview Board in being extra cautious, but that by itself does not mean that a person in respect of whom certificate given by the CMO, which was not found to be incorrect by the experts of the ENT department of KGMU should have been asked to undergo further test.

10. In the present case the prejudice and bias suffered by the Interview Board against the differently abled persons, can be easily inferred. When the experts in the ENT Department of KGMU did not express any disagreement with the opinion of the CMO and that they have not reported the petitioner to be suffering from hearing impairment less than 45%, it was not necessary for them to refer the petitioner for any further specialised test. The insistence of the respondents in asking the petitioner to appear for specialist test, clearly goes to show that they are not willing to admit any person in the category of physically handicapped persons and were subjecting the candidates to repeated test, with an aim to disqualify them. Such prejudice is not new for persons, who do not easily admit that differently abled persons, will be able to perform their duties and responsibility of the job as efficiently as a person, who does not suffer from any disability. The insistence of the Medical Board consisting of 2 ENT Surgeons and one eye specialist to refer the petitioner for "repeat PTA, BERA and Speech Audiometry test" was wholly unnecessary and uncalled for exercise by the experts.

11. The judgment rendered by learned Single Judge does not require any interference in Special Appeal. The Special Appeal is dismissed.