
(2008) 02 AHC CK 0136
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Kuldeep

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Citation : (2008) 2 UPLBEC 93

Hon'ble Judges : H.L. Gokhale, C.J.;Vineet Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—Heard Sri M.C. Chaturvedi, Chief Standing Counsel of the State of U.P. along with Sri Ravi Shanker Prasad for the appellants. Sri Ashok Khare, Senior Advocate with Sri Sunil Kumar Srivastava appear for the respondent.

2. The appellants seek to challenge the order of the learned Single Judge dated 9.5.2007 whereby the learned Judge has allowed the petition filed by the respondent herein.

3. The short facts leading to this appeal are this wise. The respondent is a physically handicapped person with 5% locomotor disability. In pursuance to an advertisement for two years B.T.C. Course 2000, he applied for joining the same. The course was to be conducted in two academic years 2000-01 and 2001-02. The respondent was admitted to that course in the quota for physically handicapped persons, on the basis of his physical disability. He cleared both the examinations and on 20.9.2002 received the mark-sheet and thereafter the certificate also. He subsequently joined as an Assistant Teacher in a government primary school run by the Basic Shiksha Parishad. It is material to note that there is a need of large number of primary teachers (about 60,000) in the State of U.P. and under "Sarva Shiksha Abhiyan" special short courses known as Special B.T.C. Courses are also separately being run by the State of U.P. for making such appointments on the post of Assistant Teachers.

4. In this background, it appears that some kind of complaint was received against the petitioner by the authorities on 29.9.2004, which led to an enquiry by the District Basic Education Officer, Fatehpur. The complaint was this wise. According to the understanding of the officer concerned, for being eligible to the handicapped category one must have 40% locomotor disability and on that footing the respondent could not have been admitted to the course in that category. The respondent had got 174.74 quality marks whereas the last candidate admitted in the general category was at 186.62 marks. On that basis the officer cancelled the appointment of the respondent as Assistant Teacher and recommended that steps be taken to cancel the certificate of the respondent. Such order was passed by the Basic Shiksha Adhikari on 15.10.2005.

5. Being aggrieved by this order, the respondent filed the writ petition. It was heard by a learned Single judge. The learned Judge noted that under the advertisement for the particular course it was not specifically mentioned that one should suffer 40% locomotor disability. The learned judge also noted that BTC Course is essentially a training course for teachers and is not for employment as such under the State Government. For these reasons the learned Judge set aside the order dated 15.10.2005 and also directed that the benefits which must have accrued to the petitioner be released to him within a period of two months.

6. Sri M.C. Chaturvedi, learned Counsel for the appellants, submitted that requirement of 40% disability is under the Central Act known as The Person With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He therefore submitted that the officer was right in cancelling the certificate. He also drew our attention to a Circular issued by the Secretary of the concerned department of the State Government dated 30.9.2000 which refers to this Act and lays down the requirement of 40% disability for being considered in such category.

7. Sri Khare, learned senior counsel appearing for the respondent, on the other hand submitted that this Circular will not govern the case of the respondent for a number of reasons. Firstly because he was admitted in the course 2000-01, the session of which starts from July 2000, and obviously this Circular is subsequent thereto. That apart, he also pointed out that as far as the concerned advertisement goes, it reserves 2% seats for physically handicapped and it refers to The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993. This Act was amended in the year 1997 and the definition of a physically handicapped person as provided in Section 2(e) refers, amongst others, to locomotor disability or cerebral palsy. It does not as such, lay down any percentage of such disability. This being the position, in his submission, the order passed by the officer was obviously wrong order and the order passed by the learned Judge was fully justified.

8. We have noted the submissions of both the counsel. On the face of it the facts of the present case cannot be said to be governed under the Central Act. It was a

training course started by the State Government. The State Government referred to its own Act of 1993, specifically in the advertisement and under the said Act there is no specific requirement that one must be suffering with 40% locomotor disability. That apart, the Circular issued by the State Government is of 30.9.2000, of which there is no mention in the advertisement (although certain other Circulars have been mentioned therein). Even otherwise, the said Circular dated 30.9.2000 will surely not apply to a person who has been admitted to the course of the academic year 2000-01. This is on the footing that the Circular refers to the Central Act and requires compliance thereof.

9. It is also material to note that the respondent had not made any wrong mention in his application form. He had disclosed that he was suffering from 5% disability and that was accepted by the authorities concerned. He was given admission and he thereafter joined the course and passed the same in September, 2002. He was thereafter appointed as Assistant Teacher on 8.11.2002, which post he joined and started working. Much later i.e. on 29.9.2004 a complaint was filed and prima facie, in our view, in an absolutely technical and bureaucratic manner the officer concerned has proceeded to cancel the appointment of the respondent writ-petitioner. The officer concerned ought to have noted that under the advertisement there was no specific reference to 40% disability and this being so, when a person has himself disclosed the percentage of his physical disability correctly and when he had already been admitted and has completed the course, there was no reason for the officer concerned to cancel the appointment and to issue a direction for cancellation of his certificate which was earned by the respondent after completing his course.

10. As such the learned Single Judge has rightly quashed the order dated 15.10.2005 and granted all consequential benefits to the respondent. Such judgment does not call for any interference.

11. We are told that subsequent to this order of 15.10.2005 and in pursuance thereof, the appellants have proceeded to pass another order on 15.1.2008 which now cancels the certificate issued to the respondent. This order specifically refers to the earlier direction issued on 15.10.2005. It is a consequential order. Inasmuch as the earlier order is set aside, this order dated 15.1.2008 will also have to be held as inoperative and not effecting the rights of the respondent in any manner whatsoever.

12. For these reasons we dismiss this appeal with cost, quantified at Rs. 5,000/- to be paid to the respondent.