
(2012) 05 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 410 of 2012

Suresh Gunde

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 41
Maharashtra Civil Services (General Conditions of Services) Rules, 1981 — Rule 18, 45
Maharashtra Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2001 — Rule 7
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33, 59

Citation : (2012) 5 ALLMR 608 : (2012) 6 BomCR 158 : (2013) 1 LLJ 66

Hon'ble Judges : Sunil P. Deshmukh, J; A.S. Oka, J

Bench : Division Bench

Advocate : Vitthal G. Salgare, for the Appellant; V.H. Dighe, A.G.P. for Resp. Nos. 1 to 3 and 5 to 7 and Shri M.V. Deshpande, Advocate, for the Respondent

Judgement

Deshmukh, J.—Rule. Rule made returnable forthwith. With the consent of parties, heard finally. The petitioner has approached this Court invoking powers under Article 226 of the Constitution of India seeking mandamus to Respondents No. 1 to 4 for consideration of his case for appointment to the post of sweeper in Respondent No. 4-Municipal Corporation from the handicapped category, being a person with impaired hearing.

2. The petitioner claims that though he is physically fit and his eyesight is excellent, he suffers hundred per cent hearing impairment. He has passed Higher Secondary Certificate examination and has proficiency in English, Marathi and Hindi typing and has been issued certificates in respect of the same. Additionally, he has also passed certificate courses of MS-CIT and DTP in computer.

3. 04. On 2.6.2009, Respondent No.4 Municipal Corporation, Nanded had published an advertisement inviting applications, for recruitment of persons from handicapped/disabled categories suffering orthopaedic, locomotor, visual, speech

and/or hearing impairment. Said advertisement was issued under a special drive pursuant to the directions of the High Court in a public interest litigation and of urban development department of the State Government. Petitioner claims that one of the posts of sweeper was reserved for a person from deaf category.

4. In response to aforesaid advertisement, petitioner had applied for post of sweeper reserved for deaf person. He had accordingly been interviewed in December 2009, and had been declared selected in June, 2010. The petitioner had been referred to Respondent No. 5-Medical Board on 6.7.2010. Thereupon, he had been called for medical examination. The petitioner contends that thereafter there had been no communication to him in furtherance to aforesaid. As such, he had requested Respondent No. 4 for appointment under a representation dated 8.5.2011. However, Respondent No. 4 had been loath to act on the representation.

5. Under letter dated 26.9.2011, Respondent No. 4 purported to communicate to the petitioner that as the Medical Board has certified him to be not eligible for appointment, Respondent No. 4 cannot issue appointment order to the petitioner. It appears that Respondent No. 5-Medical Board has issued certificate on 5.8.2010 stating that the petitioner is hundred per cent deaf and purported to communicate under the same that he is ineligible candidate for the post of sweeper.

6. Questioning propriety, legality and validity of said decision dated 26.9.2011, he has petitioned this court seeking direction to respondents to forward the medical report to Respondent Nos. 1 to 3 for consideration of petitioner's case.

7. The petitioner has submitted that the Central Government has enacted a special law known as "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, hereinafter referred to as "The Central Act") and rules framed thereunder called "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 ("Central Rules" for brevity). The object of the Central Act and the Rules thereunder is to extend equal opportunities and participation to disabled persons and for protection of their rights. Even the State Government, pursuant to the powers under aforesaid enactment, has framed rules called "The Maharashtra Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules 2001 ("The State Rules", for short), providing protection to rights of persons with disability and to help such persons through the State Coordination Committee, the State Executive Committee and the Commissioner for Welfare of Persons with Disabilities under the Central Act.

8. The Petitioner has pointed out several Government Resolutions having application to this area. Under the Government Resolution dated 15.3.1963, a list of jobs suitable for disabled persons has been provided, inter alia, defining blind, deaf and orthopaedic disabilities and has referred to that the persons having

hearing impairment, possessing eyesight 6/12, 6/24 with corrections are eligible for the post of sweeper, Mali, Dhobi, Barber and Cook-mate.

9. As per aforesaid Government Resolution, the Petitioner fulfills the requirements for eligibility to the post of sweeper since he is deaf and otherwise he is physically fit with excellent eyesight.

10. In 1978, the Government issued a resolution dated 23.5.1978 setting out percentage of disability and list of jobs for disabled persons from different categories, including hearing impairment. Item at alphabetical letter (f) in the said Government Resolution refers to that a deaf and mute person having eyesight 6/6 with correction is eligible for sweeper's post. In a subsequent resolution of the Government dated 10.9.1981, with a view to ensure that one per cent reservation each in class II and class IV posts for blind, deaf and orthopedically handicapped persons is implemented, directions were issued, inter alia, providing for exchange of vacancies, if a candidate belonging to a particular category of handicap is not available and if the nature of the vacancy in the office is such that a given category of person cannot be employed. It has further been directed under said resolution that if a class III or class IV employee is medically found unfit to hold the post and from which he is proposed to be discharged or has been discharged may, where ever practicable, be considered for another identical/equivalent post for which he may be found suitable against direct recruitment quota without insisting on the condition of appointment through the Employment Exchange or the Regional Selection Board etc. A list indicating the jobs in class III or class IV suitable for the handicapped persons, is annexed at annexure A to the said resolution. All the government departments and local authorities were requested to implement said directions. The list of jobs at annexure A to said government resolution specifically refers to post of sweeper to be suitable for deaf and dumb. It has further been stipulated under caption "hearing and speech handicapped" the term "deaf and dumb" includes those who are born deaf or have been deafened at an early age resulting in simultaneous loss of speech and also those who have lost entire hearing after having learnt speaking.

11. Government Resolution dated 19.8.1992 stipulates that the benefit of reservation in employment would be available to the persons under handicapped category who are suffering deafness and dumbness of 40 per cent. A Government circular dated 6.5.2004 had been issued by the State Government for reservation of posts to physically handicapped category, including hearing impairment. The petitioner also makes a reference to Resolution dated 6.8.1986 of the Government of India for evaluation and assessment of various disabilities, and to that, those are to be followed as may be amended from time to time.

12. According to the petitioner, pursuant to rules, on representation by an applicant, the Medical Board may review its decision having regard to the facts and circumstances of the case enabling the person concerned to apply for facilities, concessions and benefits admissible under the government or non

government organization schemes and further that, Rule 7 empowers the Medical Board to review disputes regarding disability certificates and the powers are vested in the Director General of Public Health which finds place in rule 18 of the Maharashtra Civil Services (General service conditions) Rules 1983, annexure-3. The petitioner, therefore, requested Respondent No. 4 to refer his case to Respondent No. 3. The petitioner has even made a representation to Respondent No. 3 on 13.12.2011 which has not been responded to yet. The petitioner, by making a reference to Section 59 of the Central Act, points out to the position that the Chief Commissioner under the Central Act is empowered either to suo-motu or on an application by aggrieved person or otherwise to look into the complaints with regard to deprivation of rights of persons with disabilities and/or non-implementation of laws, rules, bye-rules, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities and take up the matter with the appropriate authorities. The petitioner contends that rule 45 of the State Rules provides for Commissioner for Persons with Disabilities-Respondent No. 3 herein, to look into the matter of the petitioner as he had made representation, having regard to the factual and legal position involved in the matter.

13. The petitioner relies on a government resolution dated 13.8.2009 which notes that the appointments in physically handicapped category are being made in disregard to the provisions and object of the Central Act and directs strict compliance with the provisions thereunder and to give a proper publication while making recruitment under this category. The petitioner claims to be confident about that he would ably perform his duty as a sweeper doing justice to the job without any impediment on account of being deaf. The petitioner contends that Respondent Nos. 1 to 4 are the competent authorities to take into account his eligibility to appointment on the post of sweeper and review the decision making reference to divergence in opinions of Respondent No. 5 and 6. It is under these circumstances that the petitioner requests this court to direct Respondent No. 4 to refer his case to Respondent Nos. 1 to 3 for consideration about his eligibility to hold the post of sweeper. According to the petitioner, the communication made by Respondent No. 4 runs counter to the factual and legal position and further requests that he may provisionally be appointed initially for about a year and on satisfactory performance of his duty and suitability, his services may be continued and confirmed.

14. Respondent No. 6 in response to the petition refers to that the petitioner is completely deaf, and also that he is having good eyesight and underscores that a deaf person with good eyesight is qualified for the post of sweeper under physically handicapped category. He makes reference to several government resolutions in this respect and states that pursuant to said resolutions, particularly of 1981 and 1982 issued by the General Administration Department a deaf and dumb person is eligible for appointment to the post of sweeper. He has, therefore, referred to that the Civil Surgeon has issued a certificate that the

petitioner is qualified for the post of sweeper. However, he has also referred to that Respondent No. 4-Municipal Corporation is to be guided by the circular dated 13.8.2004 under which, according to him, only a partially deaf person is eligible for the appointment. He refers to that Respondent No. 3-Medical Board under its letter dated 5.8.2010 has held that the petitioner being hundred percent deaf is not capable of being appointed as sweeper in the Municipal Corporation. However, he purports to leave it to Respondent No. 2 to decide on the eligibility of the petitioner for appointment as a sweeper.

15. The situation thus emerges that the Government of India has come out with a special enactment in the shape of the Central Act to give effect to constitutional directive principle of State policy and the proclamation on the full participation and equality of the people with disabilities in the Asian and pacific region whereto India is a signatory with a laudable object to safeguard rights of disabled persons, to enable them to enjoy equal opportunities and to help them to fully participate in national life, keep their hopes and aspirations alive with a view to achieve said object. The Central Act provides for a machinery at Central as well as State level, setting out functions, inter alia, to review and coordinate activities of the government departments and others, to develop a national policy to address issues faced by persons with disabilities, to ensure barrier free environment for them in public places, work places, public utilities, schools and other institutions, to remove discrimination against persons with disabilities in the sharing of development benefits, to counteract any situation of the abuse and the exploitation of persons with disabilities and to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities and to perform such other functions as would further the aforesaid cause.

16. The Central Act provides, inter alia, also for education, employment, non-discrimination, affirmative action, research and man power development etc. Sections 32 and 33 of the Central Act oblige the appropriate governments to identify posts in establishments which can be reserved for persons with disabilities and to periodically review the list of jobs and update the same and for reservation of posts and further obligate the appropriate governments to provide for three per cent reservation of posts, one each for the persons suffering from blindness, hearing impairment and locomotor disabilities or cerebral palsy. The Central Act also provides for special employment exchanges and requires carrying forward of vacancies etc. It further provides for evolving schemes for training and welfare of the persons with disabilities, relaxation of upper age limit, health and safety measures, regulation of employment, defrayal of costs of operating the scheme and constitution of authority responsible for the administration of the scheme.

17. Having regard to the aforesaid, it cannot be disputed that the object of the Central Act, Central and State Rules, the Government Resolutions and the scheme is laudable, however, the present case shows apathy of the Respondents

to achieve said object to a considerable extent, resulting from their perfunctory approach and is on the borderline of being callous. It may be taken into account that the provisions of the Central Act and the State Rules or for that matter various government resolutions referred to do not disqualify a person suffering hundred percent deafness from appointment to the post of sweeper. Bare perusal of said government resolutions would indicate that as a matter of policy, having regard to the peculiar situation in our country, a minimum percentage of suffering has been referred to for eligibility for appointment under the handicapped category. It is to be noted that aforesaid government resolutions or the enactment operating in the field neither disqualify nor do in any way put aside a person from getting an appointment to the post of sweeper on account of his hearing being impaired to hundred percent.

18. The Constitution ordains that the directive principles of the State policy are fundamental in governance of the country and it is the duty of the State to apply these principles in making laws. Article 41 of the Constitution requires the State to make effective provision for securing right to work in case of unemployment, disablement etc. It appears that the Central Act, Central and State Rules and the various resolutions referred to hereinabove have their origin in these principles. However, though the State policy and the laws aim at and strive to achieve the laudable object to alleviate the sufferings of disabled persons, the Respondents do not seem to be equally alive to the same.

19. The State has made laws providing reservation/allocation of posts in the employment for deaf person yet, the concerned authorities appear to be inappreciative about the same. It appears that Respondent No. 5-Board has not taken into account the various schemes for physically handicapped persons. The policy and laws do indicate that there is prescription of minimum percentage of disability/suffering for consideration of claim to employment on that basis but those do not rule out employment of a person suffering from disability of greater magnitude. Hundred percent deafness is not a disqualification under the prevailing position. It appears that without reference to aforesaid aspects, Respondent No. 5 has communicated petitioner to be incapable to appointment as a sweeper. Such a communication about the petitioner being incapable to appointment also appears to be without having regard to the positive opinion of Respondent No. 5 who appears to have considered suitability of the petitioner to appointment as a sweeper.

20. We, under the circumstances, are of the considered view that the petitioner's case deserves reference to review/revision by Respondent Nos. 1 to 3 for recommendation to appointment of petitioner as sweeper on a post reserved for deaf category.

21. In the result, Respondent No. 4 is directed to forward the medical reports submitted by Respondent Nos. 5 and 6 to Respondent Nos. 1 to 3 for consideration of petitioner's case for fresh recommendation for appointment on the post of sweeper with Respondent No. 4 which shall be done within a period of

four months from the date of receipt of this order by Respondent No. 4. Thereafter, Respondent No. 4 would issue an appointment order upon receipt of such recommendations.

22. The aforesaid be done as expeditiously as possible and preferably within a period of four months from the date of receipt of this order and till such time, Respondent No. 4 would keep one post of sweeper vacant. Rule made absolute in aforesaid terms. Petition stands disposed of, accordingly.