

(2009) 10 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 8127 of 2009

Surya Prakash Mohapatra

APPELLANT

Vs

Secretary, Orissa Staff Selection Commission and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2010) 1 ILR (Ori) 181

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—The Petitioner, who was the applicant before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 505(C) of 2008, assails the legality of the order passed by the Tribunal in the said Original Application in this writ application.

2. The Petitioner is a disabled person being blind had applied for appointment to the post of Inspector of Supplies and Inspector of Weights and Measure for which applications had been invited from eligible candidates by the Orissa Staff Selection Commission, Bhubaneswar vide advertisement No. 2379/OSSC dtd.23.10.2007. The advertisement prescribed that there would be reservation of two posts for Physically Handicapped and disabled candidates. The Petitioner having submitted his application for appointment to the said post, was allowed to appear in the written examination. He being blind in both eyes, was allowed to take a scribe during the examination. The normal time to answer the papers as allowed to other candidates was also allowed to the Petitioner. He having not been selected approached the Tribunal on the ground that under the relevant Circular, he should have been allowed twenty minutes more in each hour of examination and is also entitled for appointment directly without facing any test and should also have been given 16.54 grace marks.

3. A counter affidavit was filed by the State authorities before the Tribunal and it was stated therein that for handicapped reserved category of posts the State Government in G.A. Department Resolution dated 13.2.2006 specified the suitability of different kinds of handicapped/ disabled persons for different posts and the said Resolution does not specify blind persons to be eligible for appointment to the post advertised for i.e. Inspector of Supplies and Inspector of Weights and Measure. Therefore, the Petitioner was not eligible to apply for the post as Physically Handicapped Person and, accordingly, has no right to claim appointment even though he was allowed to appear in the written test with the help of a scribe.

4. The Tribunal with reference to the G.A. Department Resolution dated 13.2.2006 held that the Petitioner was not eligible for appointment to the post of Supply Inspector or Inspector of Weights and Measure and, therefore, he has no right to claim appointment against the said post. Inviting the Petitioner to appear in the written test was a mistake and, therefore, the Petitioner cannot take advantage of such mistake on the part of the opposite parties. With the above observations, the O.A. having been dismissed, the Petitioner has approached this Court.

5. The Petitioner, who appeared in person at the time of hearing, assailed the impugned judgment on the ground that his non selection to the post was challenged on the ground of infraction of relevant Circulars and it was never the case before the Tribunal as to whether the Petitioner is eligible to be appointed against the post of Inspector of supplies or Inspector of Weights and Measure. According to the Petitioner, the advertisement prescribed for reservation of two posts for Physically Handicapped Persons and, accordingly, he was eligible to apply for the post. He having been allowed to appear in the written test with the help of a scribe, it is no more open for the opposite parties to take a stand that he was not eligible for appointment to such post. The Petitioner referred to certain Circulars/Resolution of the Central as well as State Government and also referred to some decisions in support of his claim.

Learned Counsel for the State in support of the impugned judgment drew attention of the Court to the Resolution of the G.A. Department dated 13.2.2006 and submitted that for the post of Inspector of Supplies, a blind person is not eligible for consideration and this having escaped from the notice of the opposite parties, the Petitioner was called to appear in the written test by mistake and, accordingly, he cannot take advantage of the same.

6. The undisputed facts are that the Orissa Staff Selection Commission, Bhubaneswar published an advertisement calling for applications for appointment to 71 posts of Inspector of Supplies and 19 posts of Inspector of Weights and Measure (Legal Metrology) in October, 2007. Clause 2(a) of the advertisement relates to vacancy position of Inspector of Supplies. It also prescribes that out of the said vacancies, two are reserved for Physically Handicapped Persons. The Petitioner being otherwise eligible in terms of the advertisement, applied for

appointment to the post of Inspector of Supplies against the reserved vacancy meant for Physically Handicapped Persons. The Petitioner was also called to appear in the written test and was allowed to take help of a scribe in course of the written examination.

The Petitioner submitted that he having been allowed to take the written test, should have been allowed twenty minutes extra time for each hour of examination as provided in the Office Memorandum dated 25th July, 1978 issued by the Ministry of Home Affairs, Department of Personnel and A.R. Government of India. The Petitioner also contended that he having not been allowed extra time, he could not qualify in the written examination and, therefore, was not given appointment.

7. Learned Counsel for the State submitted that the Office Memorandum relied upon by the Petitioner has no application since the same has not been adopted by the State Government. We are unable to accept such contention since the Office Memorandum in Annexure 7 dated 25th July, 1978 clearly states that the guidelines issued in the Office Memorandum are for recruitment of Blind, Deaf Mute and Orthopaedically Handicapped Persons for appointment to Class III and IV (now Group "C and "D) posts under the Central and State Government. Therefore, there is some force in the contention of the Petitioner that he should have been allowed 20 minutes extra time for each hour of examination in terms of the said Office Memorandum. On this ground alone, we could have directed the opposite parties to reconsider the case of the Petitioner by giving him another opportunity to take the written test in terms of the aforesaid Office Memorandum. We are not able to do so because of the fact that even if the Petitioner succeeds in the written examination, he may not be in a position to get an appointment as Inspector of Supplies on the face of the Resolution of the G.A. Department of the State Government dated 13th February, 2006. The Resolution of G.A. Department as stated above, has been annexed to the writ application as Annexure 10. The said Resolution shows that consequent upon the decision of the Government of India in the year 1978, the State Government made reservation of 1% of vacancies for rehabilitation of physically handicapped persons in the public service. Taking note of Section 32 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, a list of posts meant for different disabilities has been prepared. Entry No. 188 in the list relates to Inspector of Supplies. As is evident from the said entry, the following categories of disabled persons are eligible to be appointed as Inspector of Supplies: One Arm (OA), One Leg (OL), Partial Deaf(PD) (with suitable aid), Low Vision(LV) and both legs affected but no Arms, BL (Mobility not be restricted). Blind persons are not eligible to apply for the said post. The said Resolution of G.A. Department had come into force much before the advertisement was issued for appointment and, therefore, calling the Petitioner to appear in the written test was definitely a mistake on the part of the opposite parties. Merely because the Petitioner was permitted to take the written test does not necessarily mean that he has right to appointment. The Petitioner relied

on a decision of the Apex Court in the case of Jai Shankar Prasad, Adv. Vs. State of Bihar and Others, . The Petitioner therein was a member of the Bar. He filed a writ petition before the High Court of Patna in the nature of a Public Interest Litigation praying for issuance of writ of quo warranto challenging the appointment of Dr. Shiva Jatan Thakur as a Member of Bihar Public Service Commission on two grounds and one of the ground was that the said Shiva Jatan Thakur was totally blind and was not fit to be appointed by reason of the said physical infirmity. In paragraph 5 of the judgment, the Hon''ble Supreme Court observed that Dr. Shiva Jatan Thakur was blind from his childhood and in spite of blindness, he acquired high educational qualifications and at the time of his appointment, he was working as Associate Professor in the Patna University. The Court also observed that his blindness has not affected the work of the Commission efficiently and, accordingly, dismissed the Civil Appeal. This decision may not have application in the facts of the present case as holding the post of Inspector of supplies, one is required to go to the field and discharge such nature of duties which may be difficult on the part of a blind person to do. Considering such nature of duties attached to the post of Inspector of Supplies, blind persons have been excluded in the G.A. Department Resolution in Annexure 10. There is no doubt that the blind persons are capable to discharge several other types of duties very efficiently and the Resolution under Annexure 10 also shows that post of Assistant Director, SIRD, the post of Lecturer in Arts and the post of Information Assistant can be managed by the blind persons and, accordingly, reservations have been provided for them. So far as the nature of duties attached to the post of Inspector of Supplies is concerned, it may not be possible on the part of the blind persons to discharge such duties. The Petitioner also relied on a decision of the Punjab and Haryana High Court in the case of Dalbir Singh Bagga v. State of Punjab and Ors. reported in (2005) 1 PDD(CC) 243. In the said reported case, the Petitioner was a polio victim and had physically deficit of 60%. He graduated in Electrical Engineering and was a candidate for recruitment against 100 posts of Assistant Engineers advertised by the Punjab State Electricity Board in the year 1998. The advertisement did not prescribe for reservation of any post for physically handicapped persons. The Petitioner therein had to apply as a general category candidate and was called for the interview. He was not selected and, accordingly, approached the High Court on the ground that the Board should have reserved seats for physically handicapped persons and no provision in the advertisement having been made to the said effect, the same violates the instructions issued by the State Government vide letter dated 21st August, 1997. In paragraph 15 of the judgment, it was held that the Act of 1995 meant for the physically handicapped persons is a piece of welfare legislation and it intended to secure the object which runs through the Constitution and is embodied in Article 14. Taking note of Sections 32 and 33 of 1995 Act, the High Court allowed the writ application and directed the Electricity Board to consider the case of the Petitioner therein against an existing vacancy or any vacancy that may become available in the immediate future. The said decision is distinguishable considering the fact that the Board while issuing advertisement

had adopted the instruction issued by the State Government under the provisions of 1995 Act only for the cadre of Ministerial Staff, account staff and peon but not to other posts. In the present case, reservation has been made for physically handicapped persons but the posts advertised is only to be filled up by such physically handicapped persons as mentioned in the Resolution under Annexure 10. The other decision relied upon by the Petitioner is of this Court in the case of Orissa Association for the Blind and Others Vs. State of Orissa and Others, . Referring Section 32 of the 1995 Act, this Court directed the respective Collectors to consider the candidature of blind candidates and other similarly placed candidates under reserved category strictly in accordance with Section 33 of the 1995 Act and the Resolution of the State Government dated 4.5.1981. This decision may not be of much help to the Petitioner so far as the post of Inspector of Supplies is concerned.

8. In view of the discussions made above, we are of the view that inviting the Petitioner for appearing in the written test meant for the post of Inspector of Supplies was a mistake on the part of the opposite parties, the Petitioner not being eligible for consideration for appointment to such post in view of the G.A. Department Resolution dated 13th February, 2006 under Annexure 10. However, the Petitioner was eligible to be appointed against any other Group "C" post that may be available under the State Government and unless such eligible blind persons are considered for appointment against the post which they can man, the entire purpose of 1995 Act stands frustrated.

9. We therefore while declining to interfere with the impugned order, dispose of the writ application with the following directions:

The opposite parties may consider for appointing the Petitioner in any other Group "C" post for which he is found suitable within a period of four months from the date of communication of this order or pay him compensation of Rs. 50,000/ (Fifty thousand) for inviting him to take the written test and causing mental agony resulting in litigations.