
(2021) 05 MAN CK 0002

In the Manipur High Court

Case No : Writ Petition No. (C) No. 114 Of 2020

Thokchom Nidhubon Singh

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 10-05-2021

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 34
Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 05 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Savitri, Th. Vashum

Final Decision : Disposed Of

Judgement

[1] Heard Ms. N. Savitri, learned Advocate appearing for the petitioner and Mr. Th. Vashum, learned Government Advocate for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to the respondents to

recommend the name of the petitioner for appointment to the post of Lecturer in Manipuri under the category of PWD (blindness and low vision category).

[3.1] According to the petitioner, he is a physically handicapped person belonging to category of visually handicapped person. The Director of

Education(S), Government of Manipur issued a Notification dated 06-07-2018 inviting applications from amongst the eligible candidates for

appointment of 688 Lecturers in different subjects on contract basis. As per the said Notification, the mode of selection ought to be on the basis of

written test and personal interview with weightage of 80% and 20% respectively.

It has further been stated in the said Notification that there will be reservation for the differently abled persons as per the existing norms.

[3.2] Section 34 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act, 2016') provides that every appropriate

Government shall appoint in every Government establishment, not less than four percent (ie. 4%) of the total number of vacancies in the cadre

strength to be filled with persons with benchmark disabilities of which, one percent (1%) each shall be reserved for persons with benchmark

disabilities as mentioned therein. As per the provisions of Section 34 thereof, the number of posts to be reserved for the persons with disabilities will be

26 i.e. 4% of 688, out of which 6 posts are to be specifically reserved for the persons belonging to blindness or low vision category i.e. 1% of 4%.

[3.3] Pursuant to the said Notification dated 06-07-2018, the petitioner applied for the post of Lecturer in Manipuri; appeared the written test

examination and was recommended for appearing in the interview vide order dated 17-11-2018 issued by the Director of Education (S), Government

of Manipur. Altogether 19 PWD candidates got through the written test and appeared for the interview. When the final selection list was notified vide

letter dated 25-11-2019 issued by the Under Secretary (Education/S), Government of Manipur, only 13 PWD candidates were found to have been

recommended, out of which 2 PWD candidates belonging to the visually handicapped (blindness and low vision) category were recommended. The

said recommendation did not show the list of candidates in order of merit, thereby creating a room for fabrication in the matter relating to reservation

for the differently abled persons. As per the provisions of Section 34, the State Government ought to have recommended the names of 6 candidates in

respect of the category of blindness & low vision.

[3.4] The process of selection was very much in contravention with the provisions of Article 14, 16 of the Constitution of India and the provisions of

the Act, 2016, as a result of which the petitioner had been denied the appointment to the post of Lecturer in Manipuri. Hence, the instant writ petition

has been filed by the petitioner.

[4] The stand of the respondents as indicated in their affidavit filed by the Dy. Secretary (Education/S), Government of Manipur is that as per the OM

dated 11-11-2009 issued by the Department of Personnel & Administrative

Reforms (Personnel Division), Government of Manipur, the seats to be reserved for the differently abled persons in the State was 3% of the vacancies in Group A, B, C and D posts with 1% each for the persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor palsy. The total 688 posts for appointment to the posts of Lecturers on contract basis were distributed to 22 subjects including 100 posts for the subject of Manipuri. Since the appointment of 42 posts of different tribal dialects had been deferred, the written test was conducted on 11th and 13th May, 2018 in respect of 646 posts in 13 subjects. The OM dated 15-01-2018 issued by the DOPT, Government of India for the reservation of seats for the persons with benchmark disabilities reserving 4% seats as defined in the Act, 2016, was adopted by the State Government only on 26-02-2020 and therefore, the OM dated 11-11-2009 issued by the Department of Personnel & Administrative Reforms, Government of Manipur being in operation, was applicable with the result that the candidate belonging to PWD candidate could be considered for appointment against 3% reservation and only 18 PWD candidates got through written test and interview.

[5] From the pleadings as aforesaid, it is seen that the petitioner is a differently abled person belonging to the category of blind or low vision who applied for appointment as a Lecturer in Manipuri. As per the OM dated 11-11-2009, in respect of direct recruitment, 3% of the vacancies is reserved for the persons belonging to differently abled person in Group A, B, C, and D posts with 1% each of them suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor palsy. As per the stand of the State Government, out of 688 posts advertised for direct recruitment, the written test was conducted only in respect of 646 posts. As many as 18 candidates belong to the category of differently abled persons, were qualified in the tests. But it is not clear as to how these 18 candidates were to be accommodated in 13 subjects. There were 100 posts, so far as the subject of Manipuri for which the petitioner applied, is concerned. If that be the case, there were three seats available for the persons belonging to the category of differently abled persons and that too, one seat each for the persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor palsy. In other words, one person from each of the three categories of persons, will have to be appointed as Lecturer in the subject of

Manipuri.

[6] The grievance of the petitioner is that although three seats in the subject of Manipuri were reserved for the category belonging to differently abled

persons, the same have not been equally divided and given to the three categories of differently abled persons. In other words, one seat each will have

to be given to the three categories of differently abled persons but the same had not been done by the respondents. Three seats which were reserved

for the differently abled persons in the subject of Manipuri, ought to have been given to the three categories of differently abled persons and instead of

doing that, three seats have been given to two categories only, while denying a seat to the third category. In order to support his contention, Ms. N.

Savitri, learned counsel appearing for the petitioner has drawn the attention of this Court to the letter dated 25-11-2019 of the Under Secretary

(Edn/S), Government of Manipur addressed to the Director of Education(S), Manipur conveying the approval for appointment of Lecturers on contract

basis. A list of selected candidates approved for appointment on contract basis was enclosed therewith as Annexure-A. Out of 70 selected candidates

leaving aside the seats reserved for the ST candidates, three candidates belonging to differently abled persons, are found to have been selected at

serial No.13, 16 and 61. The contention of the learned counsel appearing for the petitioner is that as the Act, 2016 came into force on 19-04-2017 and

in terms thereof, an OM dated 15-01-2018 came to be issued by the Government of India, the question of adoption of the Act by the State

Government would not arise at all, for which she relied upon some of the decisions rendered by the Honâ??ble Supreme Court including one

rendered in Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co-operative Housing Society, Jaipur & ors, AIR

2013 SC 1226 and that the OM dated 11-11-2009 would be deemed to have ceased to operate from 19-04-2017, the date on which the Act, 2016

came into force. It has further been submitted that out of three candidates selected, two candidates are from the category of locomotor palsy, while

one from the category of hearing impairment and none from the category of blindness or low vision which is in violation of the OM dated 11-11-2009.

Apart from the legal issue being submitted by her, her contention on facts can be said to have some merit for the reason that there is no averment in

the affidavit filed on behalf of the State Government as to how two persons of the same category have been appointed as Lecturer in the subject of Manipuri, may be, because there is no specific averment about it in the writ petition as well. This contention of the counsel appearing for the petitioner is not based on the averments made in writ petition. What have been stated in the writ petition, are that out of six seats to be reserved for the category belonging to blindness and low vision, only two had been recommended and therefore, the name of the petitioner also ought to have been recommended for the appointment. Be that as it may, the document namely the letter dated 25-11-2019, mentioned hereinabove, speaks for itself and as per the list of selected candidates enclosed therewith in respect of the subject of Manipuri, the candidate at serial No.16 belongs to the reservation category of UR(HI), while the candidates at serial No.13 and 61 belong to the reservation category of UR(OH) and OBC M(OH) respectively. The abbreviated terms 'HI' and 'OH' used against the selected candidates are not defined in the OM dated 11-11-2009, nor are they included in the list of disabilities in respect of which the disability certificate is to be issued by the Institute/ Hospital as mentioned in the proforma certificate appended to the said OM. Although the said abbreviated term 'OH', no doubt, appears to have referred to one of the categories of the differently abled persons and in particular, the category of locomotor palsy, the same has not been clearly spelt out in the selection list. But the fact remains that out of the three seats reserved for the differently abled persons, one candidate is selected against reservation category of UR(HI), while two candidates are selected against the reservation category of UR(OH) and OBC M(OH) which means that two candidates are selected against the same category which is impermissible under the provisions of the OM dated 11-11-2009. What the said OM provides, is that one candidate shall be selected against each of the categories, which appears to have not been done in the present case. Therefore, the selection of candidates in respect of the subject of Manipuri appears to be incorrect, so far as the application of the reservation of seats for the differently abled persons in the subject of Manipuri is concerned.

[7] One aspect which needs to be considered by this Court at this juncture, is the contention of the learned Government Advocate that the

appointment of the Lecturers on contract basis was for a period of one year which has expired and therefore, there is no point of considering the issue involved herein, to which it has been submitted by the counsel appearing for the petitioner that the Lecturers appointed on contract basis for a year, are being allowed to continue rendering their services. However, no material has been placed on record by either of the counsels appearing for the parties to show that either the Lecturers are being allowed to continue rendering their services or their services have been terminated on the expiry of the term of contract. Be that as it may, the fact remains that the selection of candidates against the seats reserved for the differently abled persons in respect of the subject of Manipuri is illegal being violative of the provisions of the OM dated 11-11-2009 issued by the State Government. However, if the term "OH" refers to or is meant for the persons belonging to blindness & low vision category, the petitioner may not have a good case, unless he secures more marks than the two candidates who have been recommended for appointment in the subject of Manipuri. It is the State Government only which has to examine it and clarify the same to the petitioner, as the recommendation made for appointment as Lecturer in various subjects, is stated to have not been made in order of merit, as is evident from the document itself. If the abbreviated term "OH" is meant for the category of locomotor palsy, the petitioner is definitely entitled to his appointment as Lecturer in the subject of Manipuri.

[8] In view of the above, the instant writ petition stands disposed of with the direction that the Respondents shall consider the case of the petitioner, in terms of the observations made hereinabove, for engagement/ appointment as Lecturer in the subject of Manipuri on contract basis against the seats reserved for the differently abled persons and in particular, against the seat reserved for the persons suffering from blindness or low visions. This exercise shall be done within a period of one month from the date of receipt of a copy of this judgment and order. If the selected candidates are still being allowed by the State Government to continue with their contractual engagement and at the same time, if the petitioner is found to be entitled to engagement in the subject of Manipuri, an appropriate order shall be issued in respect of the petitioner within two weeks after the expiry of a month as mentioned hereinabove.