
(2022) 12 SHI CK 0055

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5090, 5122 5124, 5276, 5278 Of 2022

Umesh Jaswal And Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 19-12-2022

Acts Referred:

Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995
— Section 32, 33, 36

Citation : (2022) 12 SHI CK 0055

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Ankush Dass Sood, Rakesh Kumar, Desh Raj Thakur, Narender Thakur

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Since all these petitions involve identical questions of facts and law, therefore, these are being decided by a common judgment.

2. Petitioners in CWP Nos. 5090 of 2022, 5278 of 2022 and 5124 of 2022 were appointed as Trained Graduate Teachers in the Department of Elementary Education, in the year 2010, under the 3% quota for disabled persons. Petitioners in CWP Nos. 5122 of 2022 and 5276 of 2022, were appointed as Peons (Class-IV) in Health and Family Welfare Department, in the year 2008, under the 3% quota for disabled persons.

3. The petitioners were appointed on contract basis. By way of instant petitions, they are seeking the relief that they be considered on regular basis from the date of their initial appointments.

4. The aforesaid claim of petitioners has been denied to them by the respondents, primarily on the ground that the Recruitment and Promotion Rules in vogue for the respective posts of petitioners, at the time of their respective

appointments, provide for two modes of appointments, one by appointment on contract basis and other on regular basis. Since, the initial appointments of petitioners was in accordance with the relevant Recruitment and Promotion Rules and as such they cannot be granted the status of regular employee from the date of their initial appointments. It is also the case of the respondents that no exception can be carved in favour of the petitioners only because they have been recruited under 3% quota for disabled persons.

5. I have heard Mr. Ankush Dass Sood, learned Senior Advocate, for the petitioner and Mr. Desh Raj Thakur, Additional Advocate General for the respondents nad have also gone through the record carefully.

6. The question that arise for determination in all these petitions is whether the appointments of persons with disability, on contract basis, can be said to be in consonance with the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995?

7. The above noted question has already been decided in negative by this Court vide judgment dated 22.08.2022 passed in CWPOA No. 1066 of 2019, titled as Nitin Kumar vs. State & Anr. After discussing the relevant aspect on the issue, this Court has held as under::-

"9. The 1995 Act has been enacted with most laudable object to provide equal opportunities to the persons with disabilities. Section 32 of the Act provides for identification of posts, which can be reserved for persons with disabilities whereas, Section 33 provide for reservation of such posts, which reads as under:-

"33. Reservation of posts.—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

10. Thus, there is a clear mandate of law to every appropriate government to appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each is mandatorily required to be reserved for persons suffering from hearing impairment, blindness and locomotor disability or cerebral palsy.

11. The Hon'ble Supreme Court of India in Union of India vs. National Federation of the Blinds & others, 2013 (10) SCC 772 interpreted the purpose of 1995 Act as under:-

"24) Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent No. 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a Special Employment Exchange for them. For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the appellants and the respondents arises on the point of interpretation of these sections.

25) It is the stand of the Union of India that the Act provides for only 3% reservation in the vacancies in the posts identified for the disabled persons and not on the total cadre strength of the establishment whereas Mr. S.K. Rungta, learned senior counsel (R-1) appearing in person submitted that accepting the interpretation proposed by the Union of India will flout the policy of reservation encompassed under Section 33 of the Act. He further submitted that the High Court has rightly held that the reservation of 3% for differently abled persons in conformity with the Act should have to be computed on the basis of the total strength of a cadre and not just on the basis of the vacancies available in the posts that are identified for differently abled persons, thereby declaring certain clauses of the OM dated 29.12.2005 as unacceptable and contrary to the mandate of Section 33 of the Act."

12. The Hon'ble Apex Court in para-52 of above noted judgment further mandated as under:-

"Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court."

13. Thus, keeping in view the object of 1995 Act there is no hesitation to hold that the purpose of reservation of posts under Section 33 of 1995 Act will not be fulfilled by making temporary, ad-hoc or contract appointments. Such an interpretation will make the very purpose of 1995 Act otiose. The reservation mandated under Section 33 of the Act will necessarily mean to provide employment, which has permanency attached to it and that can only be by way of regular appointment.

14. Reverting to the facts of the instant case, admittedly, petitioner is suffering from 90% hearing impairment and also was appointed against the backlog vacancies for persons with disability. Thus, petitioner is entitled for all protection as envisaged under 1995 Act. View from any perspective the petitioner was entitled to be appointed on regular basis from very inception.”

8. The cases of the petitioners in the instant petitions are squarely covered by the aforesaid judgment passed by this Court in Nitin Kumar's case and as such no exception can be carved out in their cases. Therefore, the petitions are entitled to be considered as regular employees from the date of their initial appointments. The reasons assigned in the aforesaid judgment titled as Nitin Kumar vs. State of H.P. & Ors. (supra) shall mutatis mutandis apply to the cases of the petitioners.

9. A coordinate bench of this Court while deciding CWP No. 4299 of 2019, titled as Pushpa Devi & Others vs. Himachal Pradesh University, decided on 16.08.2019, has also held the identical situated persons to be entitled for regular appointments from the date of their initial appointments.

10. In view of above discussion, the petitions are allowed and the respondents are directed to treat the appointments of petitioners on regular basis from the date of their initial appointments. The respondents are further directed to release all consequential benefits to the petitioners within eight weeks from the date of production of copy of this judgment by the petitioners. Petitions are accordingly disposed of, so also, the pending applications.