

(2015) 10 DEL CK 0309

In the Delhi High Court

Case No : W.P.(C) 1398/2015 and CM No. 2451/2015

Union of India

APPELLANT

Vs

Mahipal Kumar

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 62

Citation : (2015) 225 DLT 361

Hon'ble Judges : V. Kameswar Rao, J.

Bench : Single Bench

Advocate : A.S. Dateer, Advocate, for the Appellant; Ajay Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated August 20, 2014 passed by the Chief Commissioner for Persons with Disabilities Ministry of Social Justice & Empowerment Department of Disability Affairs whereby the Commissioner has directed the petitioner to give appointment letter to the respondent for the post of Group D in North Western Railway subject to the respondent fulfilling other requisite criteria within 45 days from the date of receipt of the order.

2. The facts as noted from the petition are, the Recruitment Cell of North Western Railway issued an employment notice No. 2/2010 invited application for filling up 5020 posts in Pay Band-I of Rs. 5200-20200 with Grade Pay of Rs. 1800/- and made 3% reservation for persons with disability in terms of DoP&T circular dated December 29, 2005. Out of the said vacancies, 150 vacancies were reserved for physically handicapped candidates. On September 24, 2012, during the verification of the documents, it was found that the certificate enclosed by the respondent along with his application does not bear the designation and seal

of the Members of the Medical Board, which should indicate the presence of a specialist member in the relevant field. The candidature of the respondent was rejected for want of valid disability certificate. As he was not issued appointment letter despite being selected nor he was told about the reasons for not issuing the appointment letter, he filed a complaint before the Commissioner. It was his case before the Commissioner that he waited for six months, yet no appointment letter was issued. It is also noted that during the pendency of the complaint before the Commissioner, the Commissioner wrote a letter to the Deputy Superintendent, Sadar Hospital, Bihar Sharif, Nalanda from where the respondent had got the disability certificate dated November 30, 2006. The Deputy Superintendent, Sadar Hospital, Bihar Sharif, Nalanda, vide his letter dated August 19, 2013 confirmed to the Desk Officer in the office of the Commissioner that the disability certificate No. 1055 dated November 30, 2006 issued to the respondent, Mr. Mahipal Kumar, on comparison the said certificate was found to be true. The Commissioner was of the view that on examination of the medical certificate and other related documents, the certificate bears the seal and signature of the Civil Surgeon, Nalanda who chaired the Medical Board. He also concluded that the certificate bear the signature of two other members though the certificate does not bear their respective seals. The Commissioner was of the view that the rejection of the certificate by the petitioner was on a frivolous and untenable grounds. According to him, there was no substantive violation of O.M dated December 29, 2005 of the DoP&T and minor procedural lapse such as absence of seal of two member Doctors and absence of explicit indication of the specialist belonging to the related category of disability could have been correct.

3. Mr. A.S. Dateer, learned counsel appearing for the petitioner would submit that the Commissioner had no power to direct the petitioner to issue appointment letter to the respondent. According to him, such a power is not contemplated under the provisions of the Persons Under Disability (Equal Opportunity, Protection of Right and Full Participation) Act, 1995. That apart, he would state, the Commissioner could not have sat as an Appellate Authority over the decision of the petitioner on the authenticity of the disability certificate issued to the respondent. In this regard, he would rely upon the judgment of the Supreme Court in the case of Union of India v. Sarwan Ram and Anr. Civil Appeal No. 9388/2014 decided on October 8, 2014 and State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin, in support of his contention.

4. On the other hand, learned counsel appearing for the respondent would justify the order of the Commissioner and states that once the authenticity of the certificate having been confirmed by the hospital at Nalanda, the contents therein needs to be accepted and the Commissioner rightly relying upon the said communication, granted the relief.

5. Having heard the learned counsel for the parties, the issue which needs to be decided is whether the petitioner was right in not accepting the disability

certificate and thereby denying appointment to the respondent. There is no denial to the fact that the DoP&T O.M dated December 29, 2005 does stipulate, in terms of clause 10, the competent authority to issue disability certificate. According to the said Office Memorandum, the competent authority is a Medical Board to be constituted by the Central/State Government. The said Board should consist of at least three members, out of which one shall be a specialist in the particular field for assessing locomotor/cerebral/visual/hearing disability, as the case may be. There is no denial to the fact that the certificate issued to the respondent, even though was by Board consisting of three members but it does not indicate whether any one of the members was specialist to certify the respondent having locomotor disability. The presence of the specialist has relevance inasmuch as the disability certificate issued is on an assessment of the candidate having disability in the nature of locomotor/cerebral/visual/hearing. The specialist in the particular field, with his expertise, would be able to assess the said disabilities in a more precise manner. At the same time, it is not to comment on the competency of the Doctors who had issued the certificate dated November 30, 2006 to the respondent. It may be so, that the members of the Committee who had assessed the respondent, had amongst them, a specialist in the field for which the disability certificate was given to the respondent. But the same is not reflected in the disability certificate. Since the O.M contemplates the constitution of the board in a particular manner, it is expected that the certificate issued is in conformity with the office memorandum. I note, that the communication that was sent by the office of the Commissioner to the Civil Surgeon, Nalanda on July 31, 2013 (annexure P-5) could have been more precise calling upon the Civil Surgeon to indicate the name of the member who was a specialist in the particular field who had also assessed the respondent while giving the disability certificate. The only response sought was about the genuineness of the certificate, which aspect has been confirmed by the Civil Surgeon, Nalanda in his letter dated August 19, 2013. The Civil Surgeon, Nalanda, having confirmed authenticity of the certificate, surely the contents of the said certificate cannot be doubted which certifies the respondent having locomotor disability of 45%. The learned Commissioner has in the impugned order observed as under:--

"13. After hearing out both the parties and after a careful perusal of the relevant available records, it is apparent that the candidature of the Complainant was rejected on flimsy and untenable grounds. The respondent did not bother to cross check with the disability certificate issuing authority in respect of the Complainant regarding its authenticity. If the respondent had any doubt it is palpably untenable and the respondent could have cross checked the genuineness/authenticity of the disability certificate as stated above. Such cross checking should have convinced (sic.) the respondent that there has been no substantive violation of para No. 10 of the O.M No. 36035/3/2004-Estt(Res) dated 29.12.2005 of the department of personnel and training and minor procedural gaps such as absence of seals of two member doctor, and absence of

explicit indication of the specialist belonging to the related category of disability could have been correct".

6. On the basis of the above, if the Commissioner has directed the appointment of the respondent then the same cannot be interfered with, but, the Commissioner should have given some directions so as to bring the certificate in conformity with the O.M. dated December 29, 2005. Before I give any directions, I would deal with the submissions made by the learned counsel for the petitioner on the competency of the Commissioner to give such directions. The said issue is no more res-integra in view of the judgment of the Supreme Court in the case reported as Geetaben Ratilal Patel Vs. District Primary Education Officer, , where, in para 20, the Supreme Court has held as under:--

"20. The provisions of Sections 47 and 62 of the Act, when read together, empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank. The power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. A complaint may be made by any disabled person himself or any person on behalf of disabled persons or by any person in the interest of disabled persons. Thus the issue as involved is decided affirmatively in favour of the appellant and against the respondent."

Insofar as the judgments relied upon by learned counsel for the petitioner are concerned, in the case of State Bank of Patiala and ors (supra), the Supreme Court was concerned with a direction given by the High Court at the interim stage for appointing the respondent pending hearing of the writ petition. It was in that background, the Supreme Court said, the Commissioner could not have passed the directions of giving appointment to the respondent as an interim direction which virtually amounted to allowing the writ petition without hearing the bank. The said judgment would not be applicable to the facts of this case.

7. Insofar as the judgment in the case of Union of India v. Sarwan Ram and Anr., the Supreme Court was concerned with the case wherein the application given by the respondent No. 1 was rejected on the ground that he did not paste photograph in military uniform as being defective. The Central Administrative Tribunal, Jaipur dismissed the Original Application on April 1, 2011. The High Court allowed the writ petition of the respondent No. 1 on the ground that the respondent No. 1 has produced on record, the disability certificate issued by the Record Officer (Records) Jat regiment which proves that he served for total 24 years and 24 days with the Indian Army. It was the contention on behalf of Union of India that as per the Defence Service Regulations, officers holding honorary commissions and released officers who hold other types of commissions may, on special occasion, wear military uniform. It is in order to eliminate the possibility of any bogus persons getting such recruitment, condition No. 8.7 (i) was introduced to paste photograph in military uniform on the application form. The Supreme Court while allowing the appeal was of the following view:--

"Condition No. 8.7(i) is one of the conditions mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent No. 1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent No. 1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application form is defective".

8. From the perusal of the conclusion of the Supreme Court in the case of Sarwan Ram and Anr. (supra), it is clear that the High Court, in exercise of its power under Article 226 of the Constitution of India, cannot substitute its opinion, based on some evidence to comment about the appropriateness of a document.

9. In view of the discussion above, and noting that the respondent was kept away from employment for almost three years, maintaining the direction given by the Commissioner to give appointment to the respondent, I direct the same be given within eight weeks from the date of this order. The petitioner shall, before effecting the joining of the respondent, would call upon the respondent to appear before an authorized Medical Authority in the State of Bihar as it is noted, he is a resident of Nalanda (Bihar) and to avoid any inconvenience to the respondent, for evaluation, in terms of O.M. dated December 29, 2005. The communication in that regard be sent along with the offer of appointment, which should include the date, time and the name of the hospital.

10. The writ petition is disposed of in the above terms.

CM No. 2451/2015

11. In view of the order passed in the writ petition, the present application is dismissed as infructuous.