
(2010) 05 P&H CK 0338
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1420 of 2007

Viklang Sang, Haryana

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 38, 41
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33, 47, 47(2)

Citation : (2010) 2 ILR (P&H) 574

Hon'ble Judges : Mukul Mudgal, C.J.; Jasbir Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukul Mudgal, C.J.—This writ petition has been filed by Viklang Sabha, Haryana, Sirsa having its registered office at 404, Ram Gali, Kirti Nagar, Sirsa through its President Baljit Raj, an association of physically challenged persons of the State of Haryana. The primary challenge in this writ petition is to the policy of the Government of Haryana, which denied the benefit of promotion to the disabled employees claimed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter for brevity referred to as the "Act").

2. The principal grievance raised in the writ petition relates to the denial of 3% quota in the promotional avenues to the disabled persons. The main stress of the petitioner is on the fact that even the Central Government provides 3% quota in promotional avenues as is evident from Annexure P-2 which is evident from a communication from the Ministry of Personnel, Public Grievances and Department of Personnel & Training, New Delhi addressed to one of the petitioners and the relevant portion of the said communication reads as follows:--

(i) Reservation for SC candidates in department promotion quota is 15%.

(ii) There is no reservation for OBC candidates in departmental promotions quota;
(iii) Reservation for physically Handicapped persons in departmental promotion quota is 3%.

(iv) With reference to point iv of your applications, it is the concern of Shri A.K. Srivastava, US (Estt.D) and CPIO of this Department. Accordingly, your application is being transferred to Shri A.K. Srivastava, US (Estt. D) and CPIO for sending you a reply in the matter.

(Emphasis supplied).

3. Reliance has also been placed on the office memorandum dated 29th December, 2005 issued by the Government of India, Ministry of Personnel Department, New Delhi, the relevant portion of which reads as under:--

With a view to consolidating the existing instructions, bringing them in line with the persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and clarifying certain issues including procedural matters, the following instructions are issued with disabilities (physically handicapped persons) in posts and services under the Government of India. These instructions shall supersede all previous instructions issued on the subject so far.

2. Quantum of Reservation:--

(i) Three percent of the vacancies in case of direct recruitment to Group ABC and D posts shall be reserved for persons with disabilities of which one percent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability;

(ii) Three percent of the vacancies in case of promotion to Group D, and Group C posts in which the element of direct recruitment, if any, does not exceed 75% shall be reserved for persons with disabilities of which one percent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

(Emphasis supplied).

4. It has been submitted that even in the category of Scheduled Caste candidates reservation on promotion is being given to such employees in Haryana itself in Class III and Class IV posts.

5. The respondent State of Haryana has adopted a stand is that there are provisions in the Act for reservation of posts for the initial recruitment of disabled persons as is evident from Sections 32 and 33 of the Act but there is no provision in the Act for reservation for the disabled in promotions. It is also submitted that since the State Government has already made a provision for

reservation at 3% at the time of appointment for disabled, such a reservation cannot be given in promotion. For this purpose the letter dated 23rd December, 2002 issued by the Chief Secretary, to Government of Haryana is sought to be relied upon. The relevant portion of the letter in question reads as follows :--

Sir, I am directed to refer to your letter No. 12279/H-3/SZ/2002 on the subject noted above and to inform you that there is no need to provide reservation in promotion in Class III & IV posts to Physically Handicapped persons.

Yours faithfully, Sd/...., Under Secretary General Administration, for Chief Secretary to Government Haryana.

6. The learned counsel for the petitioner placed reliance on the judgment of the Delhi High Court Union of India through GM. Northern Railway versus Jamohan Singh etc, where the following proposition of law was laid down :--

18. The conjoint reading of Sections 33 and 47 of the Disability Act giving the interpretation which these provisions deserve, we are of the opinion that the persons with disability would be entitled to reservation even in promotion if the promotion is to Group C and D post.

7. In our view Section 47 of the Act is a crucial provision which reads as under :--

47. Non discrimination in Government employment--

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided farther that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

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

(Emphasis supplied).

8. Section 47(2) cannot be construed so as to grant employment to disabled persons merely at the initial stage of induction in service. The intention of the Act is clear and equal opportunity for career progression inducing promotion is clearly the legislative mandate. Giving any other meaning of the said provision will defeat the object of the Statute. The relevant portion of the objects and

reasons of the Act are reproduced as under:--

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-avis non disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream.

(Emphasis supplied).

9. Sub-clause (i) and (v) of the said objects and reasons are more significant because it require the State to provide for employment to disabled persons. It also stresses on equalization of opportunities which can not be achieved only at the initial stage of recruitment. If the plea of the State is to be accepted and the benevolent legislation is given a restricted meaning it could lead to stagnation of the disabled at the initial recruitment level and would eventually lead to uncalled for frustration. We thus respectfully agree with and reiterate the view taken by the Delhi High Court in the above quoted judgment in Union of India through GM. Northern Railway v. S. Jagmohan Singh in WP No. 11818 of 2004 dated 7th December, 2005.

10. The Parliament did not by the Legislation intend to give a token initial representation to the disabled but intended to provide employment with full avenues for career progression by way of promotion.

11. In the light of the above, it is evident that the purpose of the Act would be defeated by giving it the meaning adopted by the State of Haryana. It is a settled principle of law that word "employment" includes promotion. The Hon'ble Supreme Court in the case of Ajit Singh and Others Vs. The State of Punjab and Others, has defined the word "employment" to include promotions within its ambit:--

It has been held repeatedly by this Court that sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said sub-clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial

level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered " for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion " based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1).

(Amphasis supplied).

12. Similarly in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, the Hon"ble Supreme Court again interpreted the word "employment" as under :--

Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional rights to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc.

(Emphasis supplied).

13. Even the Government of India, through the Ministry of Personnel Public Grievances and Pension, Department of Personnel and Training, New Delhi has reserved posts for the handicapped in departmental promotions to the extent of 3%. The information supplied vide letter dated December 5, 2007 to the petitioner by the aforesaid Ministry is to the following effect:--

(i) Reservation for SC candidates in departmental promotion quota is 15%.

(ii) There is no reservation for OBC candidates in departmental promotion quota.

(iii) Reservations for physically Handicapped quota is 3%.

(iv) xxxxx.

14. In view of the above position of law laid down by the Hon"ble Supreme Court, the Court must adopt a liberal interpretation which advances the achievement of the object of the Act. The interpretation which is sought to be suggested by the State for denying reservation of 3% in the promotional avenues would obviously defeat the object of the Act. This would also be contrary to the mandate of Directive Principles contained in Articles 38 and 41 of the Constitution of India which read as under :--

Article:--38--State to secure a social order for the promotion of welfare of the people.--The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social

economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.)

Article 41.--Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

15. Keeping in view the findings in this judgment, the writ petition is allowed. The letter dated 23rd December, 2002 issued by the Under Secretary General Administration, for Chief Secretary to Government of Haryana is accordingly quashed and set aside. We also direct the respondents to keep 3% posts reserved for promotion for the disabled by giving them promotions as per directions and guidelines issued by the Ministry of Personnel dated 20th November, 1989 (Annexure P-5) not later than six months from today. The petitioner shall be entitled to costs quantified at Rs. 20,000 to be paid not later than four weeks from today.