

(2002) 03 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 7530 of 1998

Vinod Kumar Rai

APPELLANT

Vs

Public Service Commission, U.P., Allahabad and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33
Uttar Pradesh Nyayik Sewa Niyamavali, 1951 — Rule 20
Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 — Section 3(2)

Citation : (2002) 2 AWC 1300 : (2002) 93 FLR 890 : (2002) 2 UPLBEC 1054

Hon'ble Judges : Rakesh Tiwari, J; M. Katju, J

Bench : Division Bench

Advocate : D.P. Singh, A.N. Singh, Ashok Kumar Srivastava, Ashok Khare and P.N. Ojha, for the Appellant; S.C., Pushpendra Singh, R.K. Mishra and Alok Kumar Singh, for the Respondent

Judgement

M. Katju, J.—This Writ Petition No. 7530 of 1998 and connected Writ Petition No. 39142 of 1999, Writ Petition No. 39556 of 1994 and Writ Petition No. 20185 of 1998 involve a common question and hence, are being disposed of by a common judgment.

2. The petitioner alleged that he is a physically handicapped person and he has prayed for benefit for reservation for physically handicapped persons in the P.C.S. (J) Examination, 1997. The petitioner has stated that he was born on 1.7.1965 and has done LL.B. It is alleged that he is fully qualified and eligible to appear in P.C.S. (J), 1997. In the advertisement copy of which Annexure-2 Inviting application for the P.C.S. (J), there is no provision for reservation for physically handicapped persons although it is alleged that there is such reservation for appointment in other State services. The petitioner applied in response to the advertisement. It is alleged that reservation in all public services exists in favour of physically handicapped candidates under the provisions of U. P. Public Service

(Reservation in favour of Physically Handicapped, Dependant of Freedom Fighters and Ex-servicemen) Act. 1993, (U. P. Act No. 4 of 1993). u/s 3 (2) of the said Act, 5% combined reservations have been mentioned in favour of physically handicapped persons and dependent of freedom fighters and ex-serviceman in accordance with the Government notification as may be issued by the State Government in this regard. In exercise of power under the aforesaid provisions, the State Government issued a notification dated 4.5.1995 providing 2% reservation in favour of physically handicapped persons. Subsequently by U. P. Act No. 6 of 1997 the reservation for physically handicapped persons has been raised to 3%. A similar reservation has been made u/s 33 of The Persons with Disabilities, (Equal Opportunity, Protection of Rights and Full Participation) Act. 1995 (Parliamentary Act No. 1 of 1996).

3. A counter-affidavit has been filed by Sri T. M. Khan on behalf of the High Court. In para 4 of the counter-affidavit, it is stated that in 1978 the U. P. Government desired Introduction of reservation for physically handicapped persons in judicial service. The matter was referred to" the Administrative Committee of the High Court and in its meeting dated 8.12.1979, it was resolved that considering the nature of work done by judicial officers. It will not be advisable that any reservation be made for physically handicapped person in Judicial service. This decision of the Court was communicated to the Government of U. P. by letter dated 12.2.1980. The same decision was reiterated by the Administrative Committee in Its meeting on 31.1,1981 communicated to the State Government on 11.2.1981. The State Government again requested to the Court for reconsideration of the matter and the Court by decision dated 20.1.1982 reiterated its opinion. Hence the State Government by order dated 24.7.1982, communicated to the Registrar of the High Court that the recommendation of the High Court was accepted by the Governor and there should be no reservation for physically handicapped persons in the U. P. Civil Judicial Service. True copy of the decision of the Court and Government order dated 24.7.1982 are Annexures-CA-1 and CA-2.

4. In para 7 of the counter-affidavit, it is stated that a Committee appointed by the Chief Justice submitted a report on 8.7.1991 to Hon"ble the Chief Justice to the effect that there should be no reservation for physically handicapped persons in Judicial service. This report was laid before the Full Court which on 25.7.1992 resolved that the matter be reconsidered by a Committee of three Judges. In para 9, it is stated that the State Government sent fresh draft rules to the High Court, namely, U. P. Judicial Service Rules, 1995, in the light of the Judgment of the Supreme Court in State of U. P. v. Rafiquddin and Ors., All India Judges Association v. Union of India and Luxman Kumar Keshu Gantt v. Union of India. The Chief Justice constituted a Committee for consideration of these draft rules. The Committee drafted the rules, which also provided reservation to the effect that reservation to posts in the Judicial service for members of S.C./S.T. and others shall be in accordance with the provisions under the law prescribing percentage of reservation for different classes. This report was approved with

modification by the Full Court on 7.3.1998 and the draft rules have been sent to the Government on 2.6.1998 for necessary action.

5. In para 10, it is stated that recruitment by advertisement dated 30.12.1997 to the U. P. Nyayik Sewa Civil Judge (Jr. Division) is being held in accordance with the existing Niyamavali, 1951, which do not provide reservation for physically handicapped candidates.

6. Subsequently, a supplementary counter-affidavit was filed by Shri T. M. Khan on behalf of the High Court annexing copy of resolution of the Full Court meeting dated 17.7.1993 and 7.3.1998 vide Annexures-SCA-1 and SCA-2.

7. It appears from the supplementary counter-affidavit that the Full Court has passed resolutions on 17.3.1993 and 7.3.1998 approving the draft rules containing provision for reservation in favour of S.C./S.T. and "other categories" contained in accordance with the decision of the State Government as existing at the time of recruitment. In our opinion, these resolutions of the Full Court meetings clearly signify the consent of the High Court for reservation in favour of physically handicapped persons in recruitment to the judicial service. The words "other category of candidate in accordance with the decision of the State Government as existing at the time of recruitment" clearly indicate that reservation made by the State Government for various categories which would include physically handicapped persons was also consented to by the High Court. Learned counsel for the respondents submitted that in view of the decision of the Supreme Court in State of Bihar and Another Vs. Bal Mukund Sah and Others, , the reservation for physically handicapped persons requires the consent of the High Court. As already stated above, the resolutions of the High Court dated 17.7.1993 and 7.3.1998 tantamount to consent by the High Court for reservation in favour of physically handicapped persons in Judicial service. Thus, we are of the view that there is 3% reservation for physically handicapped persons in the U. P. Nyayik Sewa.

8. However, we are of the view that the reservation for physically handicapped persons as provided in U. P. Act No. 4 of 1993 and U. P. Act No. 6 of 1997, must be read harmoniously with Rule 20 of the Nyayik Sewa Niyamavali which states :

"20. Physical fitness.--No persons shall be appointed as member of the service, unless he be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties as a member of the service. Before a candidate who has passed the competitive examination is finally approved for appointment to the service he shall be required to pass an examination by a Medical Board. Regulations for the medical examination are given in Appendix-F."

9. Hence the benefit of reservation for physically handicapped persons can only be granted to such persons who are free from any physical and mental defect which can interfere with efficient performance of their duties if appointed to the judicial service, and this must be certified by the Medical Board set up for this

purpose.

10. Since this petition and connected petitions were in respect of examination of U. P. Nyayik Sewa in different years and since wrongly no reservation was provided for physically handicapped persons, we are of the opinion that the total vacancies for the 3% reservation which should have been given to physically handicapped persons in view of the above discussion should be now advertised together, and those persons who would have been eligible for these posts at the relevant time, will be treated as eligible and they can now apply for the same. We are giving this direction since no one should suffer for no fault of his.

11. In future also, there should be 3% reservation for physically handicapped persons for vacancies in the U. P, Nyayik Sewa.

12. With these observations, this writ petition and connected writ petitions are being disposed of.