
(2002) 03 AHC CK 0082
In the Allahabad High Court
Case No : C.M.W.P. No. 35604 of 2000

Vinod Kumar Rai	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Uttar Pradesh Higher Judicial Service Rules, 1975 — Rule 15, 7

Citation : (2002) 2 AWC 1297 : (2002) 2 UPLBEC 1057

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

Bench : Division Bench

Advocate : P.N. Ojha and Ashok Khare, for the Appellant; S.C. and Sudhir Agrawal, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, J.—This writ petition has been filed praying for modification of the advertisement Issued by the Registrar General of the High Court of Allahabad (Annexure-1 to the petition) and for a direction that there should be 3% reservation for physically handicapped candidates for selection by the U. P. Public Service Commission under U. P. Act No. 4 of the 1993 as amended by U. P. Act No. 6 of 1997 and to consider the petitioner as a physically handicapped candidate for recruitment to the U. P. Higher Judicial Service against 3% reservation for physically handicapped candidates.

2. We have heard learned counsel for the parties and have perused the affidavits.

3. The Registrar General of the High Court, Allahabad, published an advertisement in the Newspaper "Aaj" on 8.6.2000 inviting applications for direct recruitment against 38 vacancies in the U. P. Higher Judicial Service. The relevant extract of the advertisement is Annexure-1 to the petition.

4. Recruitment to the U. P. Higher Judicial Service is governed by the U. P. Higher Judicial Service Rules, 1975 vide Annexure-4 to the petition. The advertisement in question does not provide for reservation for physically handicapped persons.

The U. P. Public Service (Reservation in favour of dependants of freedom fighters and physically handicapped and Ex-servicemen) Act. 1993, provides for reservation for these categories mentioned in the Act. A true copy of the Act is Annexure-6 to the petition. In exercise of power conferred by Section 3(2) of the said Act, the State Government Issued a Notification dated 4.5.1995 prescribing 2% reservation for physically handicapped persons vide Annexure-7 to the petition. By U. P. Act No. 6 of 1997, the percentage for reservation for physically handicapped persons has been increased to 3%. The grievance of the petitioner is that no reservation has been provided in the Impugned advertisement for physically handicapped persons for recruitment to the U. P. Higher Judicial Service. The petitioner has relied on the decision of the High Court in *Daya Ram Tripathi v. State of U. P.* 1987 (1) AWC 351 (SC) : 1987 UPLBEC 165 (Annexure-10 to the petition) and another Division Bench decision in Writ Petition No. 29080 of 1992 decided on 1.10.1992 vide Annexure-11 to the petition.

5. Rule 7 of the U. P. Higher Judicial Service Rules. 1975 states :

"Reservation to posts in the service for members of the Scheduled Caste, Scheduled Tribes and Ors, shall be in accordance with the orders of the Government for reservation in force at the time of recruitment."

6. The- 1975 Rules have been framed by the State Government in consultation with the High Court. It follows that Rule 7 signifies the consent of the High Court for reservation in favour of all the categories of persons as decided by the State Government from time to time. Hence, we agree with the submission of Sri Ashok Khare learned counsel for the petitioner that there was no need for any further consent if taken for applying reservation in favour of the physically handicapped persons for recruitment to the higher judicial service.

7. Apart from this, the High Court in its Full Court meeting held on 7.3.1998 has already taken a decision for granting reservation in favour of physically handicapped candidates in recruitment to Judicial service also, vide paragraph 9 of the counter-affidavit of Shri T. M. Khan in Writ Petition No. 7530 of 1998.

8. Learned counsel for the High Court and learned standing counsel have relied on the decision of the High Court in *State of Bihar and Another Vs. Bal Mukund Sah and Others*, wherein it has been held that there can be no reservation in Judicial Service unless the High Court is consulted. We have already mentioned that the High Court had been consulted while framing the U. P. Higher Judicial Service Rules, 1975. In addition, we have seen the resolution of the Full Court meeting of the High Court. Allahabad, held on 7.3.1998 which has agreed for providing reservation for physically handicapped persons in the Judicial Services.

9. In paragraph 5 of the counter-affidavit in this case, Rule 15 of the U. P. Higher Judicial Service Rules, 1975. has been quoted, which states :

"15. Physical fitness.-- No persons shall be appointed to the service by direct

recruitment unless he is in good mental and bodily health and free from any physical defect likely to interfere with efficient performance of his duties as Member of the service. Before a person is appointed, he shall be required to appear before the Medical Board, who will examine him and certify as fit or unfit for appointment to the service."

10. A perusal of the above rule shows that the person to be appointed must be physically and mentally able to discharge his function efficiently as a Judge, and he has to be certified as such by the Medical Board.

11. We have to read the above Rule 15 along with the U. P. Acts of 1993 and 1997 and the relevant notifications. A harmonious construction leads us to the inference that while there is certainly reservation for physically handicapped persons but this is subject to the condition that such persons should not suffer from such a handicap which would interfere with efficient discharge of duty as a Judge, and this must be certified by the Medical Board.

12. Since 38 vacancies in the H.J.S. had been advertised, and since there is 3% reservation for physically handicapped persons, it follows that one of these 38 vacancies should be available to physically handicapped persons, subject to the condition mentioned above.

13. Hence, we dispose off this petition with direction to the Registrar General of the Court to advertise 1 post in H.J.S. for physically handicapped persons, and get it filled up expeditiously. The petitioner, if eligible, may also apply for the same.