

Delhi High Court

Govt Of National Capital ... vs All India Confederation Of The ... on 22 December, 2005

Equivalent citations: 128 (2006) DLT 695

Author: M Katju

Bench: M Katju, M B Lokur

JUDGMENT Markandeya Katju, C.J.

1. This Letters Patent Appeal has been filed against the impugned judgment of learned Single Judge dated 3.8.2005.
2. We have heard learned counsel for the parties and have perused the record.
3. The facts in detail have been set out in the judgment of learned Single Judge and hence we are not repeating the same except where necessary.
4. The writ petitioner, the All India Confederation of the Blind is a self help organisation of blind persons registered under the Societies Registration Act 1860 having its network of affiliates and branches spread all over India. It represents the interest of blind people across the country and caters to the special needs of education, training, employment, social rehabilitation and restoration of rights.
5. Respondent No.2 in the writ petition is the Union Public Service Commission (the UPSC), which is a recruitment and selection agency and conducts examinations for recruitment to various departments of the Central Government.
6. It is stated in para 3 of the writ petition that the UPSC has published an advertisement in the Employment News (24-30 July 2004) in which the following advertisement has appeared regarding 90 posts of Principal in Govt. Senior Secondary School under Directorate of Education, Govt of NCT of Delhi:-  
  
19. (Ref. No. F.1/254/2003-R-II) NINETY PRINCIPAL (65 MALE and 25 FEMALE) IN THE GOVERNMENT SENIOR SECONDARY SCHOOLS UNDER THE DIRECTORATE OF EDUCATION, GOVERNMENT OF NCT OF DELHI. Of the 90 posts 9 posts (08 male and 01 female) are reserved for SC candidates, 39 posts (27 Male and 12 Female) are reserved for OBC candidates and remaining 42 posts (30 Male and 12 Female) are unreserved. Out of total 90 posts, one post is to be filled up by persons Physically Handicapped (Orthopaedically) persons belonging to any category/community of candidates. QUALIFICATIONS: ESSENTIAL: A. EDUCATIONAL: (i) At least second class Master's degree from a recognised University or equivalent. (ii) Degree in Teaching/Education from a recognized University or equivalent. B. EXPERIENCE: Ten years experience of teaching in a High or Higher Secondary School or an Intermediate College. DESIRABLE: (i) Experience in administrative charge of a recognized High/Higher Secondary School/Intermediate College. (ii) Doctorate Degree. (iii) Public School Experience. DUTIES: Administrative function and over all control on the Govt. Senior Secondary School of Govt of NCT of Delhi. HQ: Anywhere under the Govt of NCT of Delhi.

**NATURE OF POSTS:** General Central Service: Posts are likely to continue and to be declared permanent in due course.

**PAY SCALE AND CLASSIFICATION:** Rs.10000-325-15200 (T.E Rs.16650) Group 'A' Gazetted.

7. The grievance of the writ petitioner is that the above advertisement violates Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the Act) under which there has to be 3% reservation for handicapped persons out of which 1% must be reserved for the visually handicapped candidates.

8. It is alleged in para 5 of the writ petition that the post of Principal is in the list of Identified Jobs for Persons with Disability (Visually Handicapped) published by the Ministry of Social Justice and Empowerment, Government of India in the year 1999 in accordance with the requirements of the Act. A true copy of the list is Annexure-C to the writ petition.

9. It is alleged in para 7 of the writ petition that the Union of India has not cleared the pending backlog as per the information received by the petitioner since February 1996 i.e. when the Act came into force and even the subsequent policies/directions on the subject issued by the Department of Personnel and Training, Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension, Government of India have not been followed by the Union of India.

10. It is alleged in para 8 of the writ petition that as per the standing instructions by respondent No.3 dated 17.9.1999 every recruiting government department needs to furnish a certificate while sending the requisitions to the Union Public Service Commission and Staff Service Commission for filling up of the posts to the effect that they have reserved the mandatory vacancies for disabled persons. It is alleged that the Union of India has not complied with the instructions of respondent No.3 or has given a wrong certificate that the reservations are implemented in true letter and spirit.

11. The writ petitioner has prayed for a direction to respondent Nos. 1 and 2 to immediately issue a corrigendum to the said advertisement incorporating the standing rules/instructions and requirements of the Act so as to make the above advertisement in accordance with the law. It is also prayed that the respondents be directed to fill back log vacancies of visually handicapped persons through a special recruitment drive within six months. It is also prayed that a direction be issued to the respondents to ensure that if a visually handicapped candidate whether from scheduled caste, scheduled tribe, other backward caste or general passes the exams/recruitment test on his own merit even if he is not treated as a handicapped person he must not be treated as a handicapped person and should be recommended on merits. In other words, if a visually handicapped candidate passes the examination/recruitment test with such high marks that he would qualify even in the general category, he must be deemed to be qualified in the general category and not in the reserved category for the visually handicapped. Hence he should not be appointed against one of the reserved posts for the visually handicapped, which should be given to some other visually handicapped applicant.

12. A counter affidavit has been filed by the Government of National Capital Territory of Delhi and we have perused the same. It is admitted in para 4 of the counter affidavit that the Ministry of Social Justice vide its notification dated 31.5.2001 identified the posts of school Principal, Vice Principal and Head Master/Head Mistress also as the posts which can be filled up by physically handicapped persons.

13. In paragraph 5 of the counter affidavit it is stated that on a representation made by one Shri V.P. Singhanian and Dr. Naresh Kumar made before the Chief Commissioner for Persons with Disabilities, who vide order dated 19.10.2004 came to the conclusion that the post of the Principal has been identified with effect from 31.5.2001 and as such with respect to the Principal's appointment for which the direct recruitment is sought to be made by the UPSC, the corrigendum is required to be issued.

14. In paragraph 7 of the counter affidavit it is stated that after May,2001 no vacancies of Principals have been filled up. These vacancies were first advertised for 90 posts on 24.7.2004 on the basis of the requisition sent by the department.

15. In para 8 of the counter affidavit it is stated that as per the order of the Chief Commissioner for Persons with Disability, the respondents submitted a representation to the UPSC on 4.11.2004 to ensure 3% reservation to the persons with disability in the direct recruitment quota of Principals. The UPSC in response issued a corrigendum in its advertisement No.1 in the Employment News dated 8-14.1.2005 and extended the date of receipt of the applications from eligible persons with disability up to 27.1.2005 and 3.2.2005 for persons residing in remote areas.

16. In para 9 of the counter affidavit it is stated that 3 posts are to be filled up by physically handicapped persons out of 90. In para 10 of the counter affidavit it is stated that there is no question of any backlog in this case for the reason that up to May/June,2001 the post was not an identified post.

17. In the parawise reply in the counter affidavit it is stated in para 3 that the department has decided that vacancy Nos. 1, 34 and 67 are to be filled up by physically handicapped persons and therefore, the UPSC was being requested to issued a corrigendum to this effect.

18. In view of these averments in the counter affidavit, there can be no grievance of the petitioner now that three percent posts are now reserved for the physically handicapped persons.

19. However, the allegation in para 12 of the writ petition deserves consideration. In that paragraph it is alleged that if a visually handicapped person is so bright that he passes the test on his own merit as a general category candidate, then he should not be treated as a physically handicapped person and his appointment should not be against the reserved quota. In other words, the reserved quota of three percent posts should be filled up excluding the physically handicapped candidate, who was so bright that he got selected being treated as in the general category.

20. We are in agreement with this submission. It has been repeatedly held by the Supreme Court that if a scheduled caste candidate gets such high marks that he would even get selected if he is treated in the general category, then he will not be treated as having been selected on a reserved scheduled caste seat, and the reserved scheduled caste seats will be filled up excluding him, vide PGI Medical Education and Research v. K.L. Narasimham, .

21. The aforesaid decision was no doubt given in the context of reservations for scheduled castes/ scheduled tribes/ other backward castes, but in our opinion, the same principle should also apply to the handicapped persons because Article 46 of the Constitution provides that the State shall promote the interests of the weaker sections. In our opinion, the expression weaker sections in Article 46 includes physically handicapped persons, and is not limited to scheduled castes and scheduled tribes.

22. The Act is a welfare legislation and hence, if two views are possible, an interpretation should be given which is in favor of the handicapped persons, vide G.P. Singh's 'Principles of Statutory Interpretation', Ninth Edition, 2004, p.736.

23. Hence, we dispose of this writ petition with the direction that any physically handicapped candidate who has qualified in the selection, whose merit is so high that if he were a general category candidate he would still have been selected, then his appointment will not be made against the handicapped persons quota, but he will be treated in the general category, and the reserved seats of handicapped persons will be calculated excluding him, and will be filled up accordingly.

24. In view of the above discussion, this LPA is disposed of.