

Delhi High Court

Nishikant Kumar vs Uoi & Anr. on 5 October, 2010

Author: Manmohan Singh

* HIGH COURT OF DELHI : NEW DELHI

+ WP (C) No. 4013/2010

Nishikant KumarPetitioner

Through: Mr. Nitesh Kr. Rana, Adv. with
Mr. Wajeeh Shafiq, Adv.

Versus

UOI & Anr.Respondents

Through: Mr. J.C.Seth, Adv. with Mr. Mithun
K.S. Rathon, Adv. for R-2.

Judgment pronounced on : 05.10.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

Case of the Petitioner

1. That the petitioner is physically challenged with 45% disability having medical condition of non-progressive congenital torticollis of left part with mild scoliosis. Petitioner has excellent academic records with distinction in B.sc Engineering (electrical) at an average of 84% and he was the university topper in his 3rd year of B.sc.
2. On 18-07-2005, the petitioner was examined by 3 Members Medical Board for Handicaps constituted by the Office of the Civil Surgeon-cum-C.M.O. Patna. The findings of the test were that petitioner suffered from congenital torticollis of left part with mild scoliosis falling in the category of locomotor disability of 45%.
3. The petitioner gave a Combined Entrance Competitive WP (C) No.4013/2010 Page 1 of 17 Examination during July-August, 2005. That the petitioner fell in the category of OBC but secured rank 394 in General Category and thus got admission in Muzzaffarpur Institute of Technology (MIT) in Electrical Engineering degree course. On 31-08-2009 the petitioner received a certificate from MIT certifying that he has passed B.sc. Engineering (Electrical) Examination 2009 from B.R.

Ambedkar Bihar University in first class with distinction.

4. In September 2009, there was an advertisement given in several newspapers by the Respondent no.2 inviting applications for the recruitment for the post of "Engineer Trainee". For the said post as per the advertisement, there was reservation of 30 vacancies for physically challenged candidates having Locomotor Disability or Hearing Impairment along with category wise reservation of 184 seats for OBC candidates.

5. This locomotor disability for physically challenged candidates is defined in "The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995" as "disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy". But as per the health standards set by Respondent no.2 given on the website www.careers.bhel.in, locomotor disability means "minimum 40% of physical defect or deformity which causes an interference with the normal functioning of the bone, muscles and joints." Also as per medical examination rules which were subject to further relaxation to physically challenged candidates provides that congenital or acquired physical defects if any noticed will be recorded on the medical examination form with a clear opinion as to whether it is likely to interfere with the WP (C) No.4013/2010 Page 2 of 17 efficient performance of the duties for which the candidate is under consideration for employment. Petitioner fulfilled the above stated criteria and applied under "Physically Challenged" category.

6. That the petitioner successfully cleared the exam dated 29-11-2009 conducted by respondent No.2 and also got through personal interview conducted by 4 board officials on 20-01-2010. A medical examination of the petitioner was also conducted and his employment was subject to it. Respondent no.2 by a letter dated 22.02.2010 sent "Provisional Offer of Appointment as Engineer Trainee" to petitioner admiring the petitioner's performance in the selection process. As per the said letter, the petitioner was supposed to report at Heavy Electrical Equipment Plant, Ranipur, Haridwar between 16th to 18th march 2010, which was complied on by the petitioner on the said date and place. However on 27-03-2010, Respondent no.2 through a letter no.HR-RTX/ET/2010 informed the petitioner that as per the Medical Examination Report he is not found fit. As per the report his medical condition was Congenital Torticollis with Scoliosis of Cervicodorsal spines and was progressive in nature. And thus his appointment is cancelled.

7. On 31-03-2010, the petitioner made an appeal to Respondent no.2 and applied for re-examination as per the company rules and paid Rs. 100/- vide a challan under head of A/c 5251903052. However Respondent no.2 issued the same result without even re-examining the petitioner by a letter dated 15-04-2010. In April 2010 itself, the Petitioner went to AIIMS for his medical examination. The specialists there gave the report that his medical condition was non-progressive in nature.

8. The petitioner contended that he is capable of doing WP (C) No.4013/2010 Page 3 of 17 work and was capable for discharging his duties under the post. Also there was no such condition mentioned in the advertisement initially given by the Respondent no.2 stating such cancellation on the later stage on the basis of progressive nature of the physical condition. The petitioner alleged that his Fundamental Rights Guaranteed under Article 14, 16, 19(1) (g), 21 of the Constitution of India have

been violated.

9. Thus, the aggrieved petitioner has filed this Writ Petition and requested the court to quash the letter dated 27-03-2010 and letter dated 15-04-2010 issued by Respondent no.2. Petitioner also requested this court to direct the Respondents to let petitioner join w.e.f. 16-03-2010 as the Trainee Engineer for which the petitioner qualified and was initially appointed for.

Case of the Respondent No.2

10. The respondent No. 2 in its counter affidavit contended that Union of India is wrongly impleaded as no cause of action arises in the jurisdiction of Delhi. The respondent No.2 being an entity registered under Companies Act, is distinct and separate from Union Of India/respondent no.1.

11. The respondent No. 2 further contended that petitioner was appointed at the Haridwar Unit and his subsequent cancellation was done by the Haridwar unit. Thus this Honâ ble court does not have any territorial jurisdiction to proceed with this petition as the cause of action has arisen in Haridwar.

12. According to the Respondent No. 2, the petitioner has just 15% Locomotor Disability as certified by the Medical Board comprising of 3 Orthopedic specialists vide their report dated 10- 07-2010, and thus the petitioner is not entitled to claim any benefit WP (C) No.4013/2010 Page 4 of 17 under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As per this act, minimum 40% disability is the criteria to be eligible for the benefits of any concession and petitioner is so not eligible under it.

13. The Medical Report dated 18-07-2005 submitted by the petitioner relating to 45% disability cannot be considered as this report is not made by a recognized Medical Authority of Central Government. Also the report is not made as per the prescribed form of the Disability act, so it cannot be accepted. For similar reasons the prescription by AIIMS is irrelevant and there is no mention of the percentage of Disability of the Petitioner in this report.

14. As per the Advertisement given by the Respondent no.2, sound medical condition of the candidates was an important criterion for their selection. The petitioner is, thus, not liable for the said post as his score was not enough to qualify him for this post under General Category.

15. I have heard the rival submissions of the parties. As mentioned earlier, in the counter affidavit the respondent No.2 has raised the preliminary objection that this Court has no territorial jurisdiction to try and entertain the petition and various judgments were referred to by the learned counsel for the respondent No.2 at the time of his submissions.

16. However, during the course of hearing, learned counsel for the petitioner has produced the relevant webpage of the website of respondent No.2 for the recruitment of Engineer Trainees and referred clause 7 of General Instructions wherein it was mentioned that any legal proceedings in

respect of any matter WP (C) No.4013/2010 Page 5 of 17 of claim or dispute arising out of this recruitment and/or an application in response thereto can be instituted only in Delhi and Courts/Tribunals/Forums at Delhi only shall have sole and exclusive jurisdiction to try any such cause/dispute.

17. Later on, the learned counsel for the respondent No.2 after taking instructions from his client has given up the objection of territorial jurisdiction of this Court. In view thereof, it is not necessary to discuss rival submissions of the parties on the question of territorial jurisdiction.

On merit, his submission is that the petitioner is not entitled to get benefit of reservation under the Act. He states that in view of the order passed by this Court on 3.6.2010, the Medical Board comprising three Orthopedic Specialists had examined the case of the petitioner who certified by its report dated 10.7.2010 that the petitioner has only 15% locomotor disability.

18. It is contended that in order to rule out the possibility of any mistake in assessment of fitness of the petitioner Medical Board examined him three times. In the earlier report, he was found unfit on the basis of Medical Report by the Medical Officer as conveyed to the petitioner vide order dated 27.3.2010. In view of the order passed by this Court on 3.6.2010, the Haridwar Unit of respondent No.2 conveyed final decision to the petitioner along with Medical Board report dated 17.7.2010 that since he has only 15% disability, the petitioner is therefore not covered by the definition percentage of disability as defined in Section 2(t) of the Disability Act. The submission of the respondent No.2 is that if petitioner is not covered by the definition of person with disability under the Disability Act, he cannot be considered as a person with WP (C) No.4013/2010 Page 6 of 17 disability.

19. It is argued by learned counsel for respondent No.2 that the old medical report dated 18.7.2005, which shows the category of petitioner as "moderate" and 45% filed by the petitioner, is unacceptable to the respondent No.2 as it is neither issued in prescribed form nor by medical authority appointed by the Central Government which is the Appropriate Govt. for respondent No.2 in the present case. It is further stated by the learned counsel for the respondent No.2 that the prescription dated 28.4.2010 issued by AIIMS is not relevant for the purpose of the present case as it does not mention percentage of disability of the petitioner.

20. Per contra, the submission of the learned counsel for the petitioner is that the present writ petition has been filed to challenge the letter dated 27.3.2010 whereby the offer of appointment was cancelled for the reason that the disease of the petitioner is progressive and there is a possibility of further deterioration of his physical health with the passage of time. The respondent No.2, therefore, cannot rely upon the certificate of Medical Report dated 10.7.2010 which declared that he has only 15% locomotor disability.

21. The contention of the learned counsel is that in fact the respondent No.2 has taken completely different stand after examination of the fitness of the petitioner by the Medical Board in view of the order dated 3.6.2010 passed by the Court and hence, the said report is without any substance. In support of his submission, he has strongly relied upon the Medical Board report dated 18.7.2005 filed by the petitioner along with the writ petition WP (C) No.4013/2010 Page 7 of 17 wherein the

certificate has been issued by three specialists from the State of Bihar declaring that the disability of the petitioner is 45% and is moderate. Thus, as per his submission, his case is covered by the definition of person with disability as defined in Section 2(t) of Disability Act, hence, he is entitled for the said benefit.

22. Learned counsel for the petitioner in support of his submissions has also referred to the DB judgment of this Court in the case of Social Jurist, A Lawyers Group Vs. Union of India (UOI) and Anr. passed in CWP No.1283/2002 decided on 13.8.2002. Paras 6 and 8 of the same read as under:

"6. Unless the mindset of the public changes; unless the attitude of the persons and officials who are given the duty of implementation of this Act changes, whatever rights are granted to the disabled under the Act, would remain on paper.

8. Section 2(p) of the aforesaid Act defines "Medical Authority" which is to be specified by a Notification to be issued by the appropriate Government for the purpose of this Act. It has to be any hospital or any institution. It is this "Medical Authority" which is competent to issue certificates to persons with disability specifying the extent of disability being suffered by such persons. Unless such a medical is so specified which is competent to issue a certificate and unless such a certificate is provided to a disabled person he would not be in a position to claim various benefits provided under the Act. However, for last more than six years, this did not occur to the authorities that the basic requirement is to specify such medical authorities by means of a Notification to enable the disabled persons to obtain certificates and then file avail the benefits of the same. This problem was brought to this court by means of present writ petition."

23. The Parliament of India has enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) wherein disability has been defined in the following term:-

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"2(i) "disability" means -

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;"

23.1 The "locomotor disability" has been defined in Section 2(o) of the Act, thus:-

"2(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy."

23.2 In terms of clause (i) of Article 16 of the Constitution of India, the State is entitled to make reservations for physically handicapped persons. Admittedly, 1% of the posts/services were reserved for the Orthopedically handicapped. Each category of disability had been divided into four groups in the following manner:

(a) Mild: less than 40%

(b) Moderate : 40% and above;

(c) Severe: 75% and above;

(d) Profound/total: 100% 23.3 As per Office Memorandum dated 4.6.1998, the following are the clauses:

"3. According to the instructions contained in the Ministry of Welfare's Notification No.4/2/83HW-III dated 6.8.1986, various concessions/benefits, including employment under the Central Government, are available only to those falling under the categories mentioned at (b), (c) and (d) in the preceding paragraph. The minimum degree of disability has also been prescribed as 40% in order for a person to be eligible for any concessions/benefits.

24. The following are the categories of persons with disabilities for the purpose of getting the benefit of 3% reservation in posts/services under the Central Government as indicated in WP (C) No.4013/2010 Page 9 of 17 Section 33 of the Persons with Disabilities (Casual Opportunities, Protection of Rights and Full participation) Act, 1995:

- (i) Blindness or low vision;
- (ii) Hearing impairment;
- (iii) Locomotor disability or cerebral palsy;

25. Each category of disability as mentioned in para 24 above would continue to be divided into four groups as mentioned in para 2 of this letter. Further, various concessions/benefits, including employment under the Central Government, would continue to be available only to those falling under the categories given at (b), (c) and (d) of the aforesaid paragraph. The minimum degree of disability in order for a person to be eligible for any concessions/benefits would continue to be

40%."

26. In view of the fact that the petitioner herein if fulfill the aforementioned criteria of his disability of locomotor in the category of moderate i.e. 40% and above and is covered within the four corner of the terms and conditions for the recruitment for the post of â Engineer Traineeâ as per the advertisement in the newspaper then his appointment has to be considered under these circumstances. However, since the reservation for handicapped person is made in terms of clause (1) of Article 16 of the Constitution of India, the policy decision adopted by the State must be strictly adhered to. Therefore, the respondent, as per law, can insist upon that the disability must be to the extent of 40% and above before the appointment of the petitioner.

27. It is also necessary to refer to Section 2 (a) of the Act in order to consider the rival submissions of the parties:

2.(a) "appropriate Government" means,--

(i) in relation to the Central Government or any establishment wholly or substantially financed by that WP (C) No.4013/2010 Page 10 of 17 Government, or a Cantonment Board constituted under the Cantonment Act, 1924 (2 of 1924), the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

(iii) in respect of the Central Co-ordination Committee and the Central Executive Committee, the Central Government;

(iv) in respect of the State Co-ordination Committee and the State Executive Committee, the State Government;

28. In order to understand the case in hand, the relevant portion of the advertisement for the recruitment of the post in question reads as under:

"Applicants should have sound health. Before joining, selected candidates will have to undergo medical examination by the Companyâ s Authorised Medical Officer and the appointment will be subject to meeting the health standards prescribed by the Company. (BHELâ s medical Examination Rules)"

29. Upon considering the facts and documents produced by the parties, it is clear that there are two reports before the Court. The first one is the report dated 18.07.2005 filed by the petitioner which indicates the disability of the petitioner as 45% and the second medical report dated 10.7.2010 produced by respondent No.2 certified by the Medical Board comprising of three Orthopedic Specialists of respondent No.2 indicates that the petitioner has only 15% locomotor disability. If this

Court strictly goes by the terms of recruitment of the posts as appeared in the newspapers which provides that before joining, selected candidates will have to undergo medical examination by the company's authorised Medical Officer and the appointment will be subject to meeting the health standards prescribed by the company. In case the medical report of the petitioner is accepted, then the writ petition is to be allowed. WP (C) No.4013/2010 Page 11 of 17 But the fact remains that medical report dated 18.07.2005 produced by the petitioner has been issued by the Bihar Government and as per clause 1 of the notification issued by the Department of Social Welfare, the same extends to the State of Bihar. Thus, there is force in the submission made by respondent No.2 that the report of the Medical Authority appointed by the Central Government to be accepted and the Appropriate Government is defined in Section 2(a) of the Act. In the case of D.S. Rashmi Ranjan Vs. Chairman, Joint Entrance Examination & Ors. 97 (2004) CLT 264 the court held as follows :

"8. The information brochure itself made it clear that a candidate claiming benefits of reservation under physically handicapped category must meet the medical standard and at the time of admission has to satisfy the Board consisting of four medical doctors and Chairman, J.E.E. or his representative that they are eligible to be categorised as physically handicapped and so also capable of undergoing each part of the requirements of the course and the decision of the Board in this respect is final. Under Rule 4(2) of the Act" the person with disability (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, the State Government is authorised to constitute a Medical Board consisting of at least three members out of which at least one shall be a specialist, in the particular field for assessing locomotor/visual including low vision/hearing and speech disability, mental retardation and leprosy cured, as the case may be.

9. In the case at hand, the petitioner claims 'to be a physically handicapped person having suffered locomotor disability. The Board consisting of four doctors including the orthopaedic Specialist and the Chairman, J.E.E., on examination of the petitioner, found him to have 20% disability as against 40% required under the Act in order to be eligible for consideration under the reserve category.

10. In such view of the matter, we do not find any merit in the contention of the petitioner that he has been illegally deprived of getting the benefit of reservation under the physically handicapped category WP (C) No.4013/2010 Page 12 of 17 for admission to the Medical Course to interfere in the findings recorded by the Expert Body and direct the Opp. party to treat him as a physically handicapped person."

30. In the case of Shiv Kumar Singh Yadav Vs. State of UP and Ors. referred by the respondent No.2, the judgment delivered by Allahabad High Court in C.M.W.P. No.51515/1999, it was held in paras 7 to 10 which are relevant to the present case and the same reads as under :

"7. We have bestowed our anxious thoughts to the questions involved in the case. A person suffering from locomotor disability and cerebral palsy comes within the purview of the 'physically handicapped' within the meaning of Section 2 (e) of the

Act. The locomotor disability as nailed down in clause (ddd) of Section 2 means disability of the bones, joints or muscles 'leading to substantial restriction on the movement of the limbs or any form of cerebral palsy'. The medical evidence In the instant case, clearly evinces that 20% locomotor disability of the petitioner 'will lead to substantial restriction on the movement of limbs'. In view of the medical evidence, therefore, the petitioner satisfies the test of being a 'physically handicapped' person within the meaning of the Act. The Government Order No. 464/65-2-2000-178/2000 dated September 30, 2000 issued by the Government of Uttar Pradesh read with notification No. 4-2/83-H.W. III Government of India, Ministry of Welfare dated 6th August, 1986, have no application inasmuch as the G.O. dated September 30, 2000 has been made applicable only in relation to benefits under the projects concerning the six 'Niyamawalian' (Rules) enumerated therein. None of the six 'Niyamawalian' cover the case of reservation at the stage of direct recruitment in public service and posts as provided in Section 3 (1) of the U. P. Act 4 of 1993. In the absence of any amendment in the Act, the Government order aforestated cannot exclude the petitioner from taking benefit of the Act No. 4 of 1993 merely because the locomotor disability he is suffering from, is only to the extent of 20% and not 40% as per standard of disability prescribed under the Government orders referred to above.

8. It was then submitted by the learned standing counsel that even if the Government order aforestated is ignored, the petitioner would still not be entitled to be selected under the quota reserved for physically handicapped persons under the U. P. Act 4 of 1993 in WP (C) No.4013/2010 Page 13 of 17 view of the provisions contained in Central Act known as "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In the Central Act, the expression "person with disability" has been defined to mean "person suffering from not less than forty per cent of any disability as certified by a medical authority". The word 'disability' according to Section 2(i) of the Central Act means :

(i) blindness :

(ii) xx xx

(iii) xx xx

(iv) xx xx

(v) Locomotor disability ;

(vi) xx xx

(vii) xx xx The word "locomotor disability according to Section 2(o) of the Central Act, means disability of the bones. Joints or muscles leading to substantial restriction of the movement of limbs or any form of cerebral palsy.

9. Section 32 of the aforesaid Central Act provides that appropriate Government shall :

(a) identify posts, in the establishments, which can be reserved for the persons with disability :

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

Section 33 of the Central Act provides that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from :

(i) blindness or low vision ;

(ii) hearing impairment ;

(iii) locomotor disability or cerebral palsy ; in the posts identified for each disability.

10. Section 3 (1) of the State Act No. 3 of 1994 as it stands amended by the U. P. Act No. 6 of 1997 envisages that there shall be reserved at the stage of direct recruitment, in such public services and posts as State Government may, by notification identify, one percentage of vacancy each for the person suffering from (a) blindness or low vision, (b) hearing impairment ; and (c) locomotor disability of cerebral palsy. Locomotor disability as defined in Section 2 (ddd) of the State Act and Section 2(o) of the Central Act, means WP (C) No.4013/2010 Page 14 of 17 disability of bones. Joints, or muscles leading to substantial restriction of the movement of limbs or any form of cerebral palsy. But unlike the provisions contained in Section 2(e) of the Central Act, the State Act by itself does not define 'person with disability' to mean a person suffering from not less than 40% of any disability as certified by medical authority. Rather, the State Act has used the term 'physically handicapped' to mean a person who suffers from blindness or low vision ; hearing impairment and locomotor disability or cerebral palsy irrespective of whether such disability is 40% or less than 40%. Thus, there is a conflict between the term 'physically handicapped' as used in the State Act and expression 'person with disability' as defined in the Central Act. Both the Acts are covered by Entry No. 23 of List III. The question is as to whether the Central Act will have precedence over the State Act. Article 254(1) of the Constitution envisages that "if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the

law made by the Legislature of the State shall, to the extent of the repugnancy, be void." It is thus evident that in the event of conflict between the law made by the Legislature of a State and law made by the Parliament, the latter will prevail subject, of course, to the provisions of clause (2) of Article 254 of the Constitution. Clause (2) of Article 254 gives predominance, in the event of any repugnancy to the law made by the Legislature of the State in respect to one of the matters enumerated in the Concurrent List provided that law so made by the Legislature of the State "has been reserved for the consideration of the President and has received his assent". The State Act in the instant case does not appear to have been reserved for the consideration of President. Question of the same being assented by the President does not arise. The Act was assented to by the Governor on December 29, 1993. In such view of the matter, clause (2) of Article 254 of the Constitution is not attracted for application and, therefore, as provided under Article 254(1), the law made by the Parliament will prevail to the extent of repugnancy. The petitioner is not entitled to be treated as a physically handicapped candidate for the purposes of the Act in view of the fact that his disability is less than 40%.

32. Hence, the medical report issued by the Bihar Govt. WP (C) No.4013/2010 Page 15 of 17 dated 18.7.2005 would not give the benefit to the petitioner for appointment to the post. As per the requirement of the policy decision, it has to strictly adhere to, otherwise, the rights of others would be affected.

33. Under these circumstances, I am of the considered view that in the light of the two medical reports filed by the parties which are contrary to each other. It is a fit case that the disability of the petitioner be assessed by another Medical Authority other than the Medical Board of respondent No.2. In order to comply with the terms of the recruitment of the post, he has to fulfill the required criteria. His medical report issued by the office of Civil Surgeon cum CMO, Patna (report of medical board for handicaps) dated 7.8.2005 does not help his case.

34. Thus, the present writ petition is disposed of with the direction that the petitioner within two months will go for the re- examination of his fitness of disability before the Medical Authority appointed by the Central Government in order to get certificate of his disability from the Medical Board and in case his disability is 40% or above, he would be entitled for the appointment to the post of Engineer Trainee under the category of physically challenge. The respondent No.2 shall issue the appointment letter immediately on production of the same. In other case if his disability is below 40% as per report, he would not be entitled for any relief as claimed in the writ petition.

35. In view of the above said reasons, the present writ WP (C) No.4013/2010 Page 16 of 17 petition is disposed of along with pending application.

MANMOHAN SINGH, J.

OCTOBER 05, 2010 jk WP (C) No.4013/2010 Page 17 of 17