

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.16258/2006

Date of Decision: April 04, 2007

In the matter of:

Sambhavana

Through: Mr. Colin Gonsalves Sr. Advocate with
Mr. Jai Singh (Advocates)Petitioner

Versus

Delhi University and Ors.

Through: a) Mr.S.K.Luthra with Mr.Pankaj Aggarwal, Advocates for
respondent nos. 8, 26, 27, 30, 40, 52, 54, 57, 58, 69, 83, 84.
b) Mr.Anurag Mathur, Advocate for University of Delhi.
c) Mr.Amit Bansal, Advocate for respondent no.13.
d) Mr.V.P.Chaudhary Sr. Advocate with Ms.Sushma
Sachdeva and Mr.Nitinjya Chaudhary for respondent no.82.
e) Mr.Amitesh Kumar, Advocate for UGC.
.....Respondent

CORAM:-

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE S.N. AGGARWAL

Issues

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

Per T S THAKUR, J (ORAL)

In this petition for a writ of mandamus the petitioner has sought a direction against the respondent University of Delhi as also the colleges affiliated to it to put in place a hundred point rosters for recruitment of persons with disability and to determine the number of vacancies available for such persons. A direction to the respondents to strictly follow the principles laid down by the UGC for purpose of filling up of the vacancies due to persons with disabilities has also been prayed for apart from other further and incidental reliefs.

The genesis of the controversy lies in a resolution which the University of Delhi had passed way back on 16.7.1994 providing for 3% reservation for blind and orthopedically handicapped candidates in teaching depths of the University and the colleges affiliated to it. The resolution envisaged that the University and the colleges would publish for the information of all concerned the reservation for blind and orthopedically handicapped categories to enable such candidates to apply for appointment against the vacancies available to them. The said resolution was subsequently

followed by what is known as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995. This central legislation also provides for reservation of 3% vacancies including those in teaching depths of the universities and colleges for orthopedically and visually handicapped and those suffering from hearing impairment. The resolution passed by the University and the legislation on the subject notwithstanding the University of Delhi as also the colleges affiliated to it, appear to have taken no steps to ensure that the stipulated vacancies in teaching cadres were set apart and offered to persons with disabilities in terms of the resolution and the enactment referred to above. This led to the judicial determination of the obligation of the respondents to do so in CWP No. 2549/1995 heard and disposed of by a single Judge of this Court by an order date 30.1.2001. A reading of the said order which has attained finality would show that the university as also the colleges were found to have done little to ensure that the benefit of the reservation reached those for whom the same was meant. The Court noticed that the information provided by the departments of the university and colleges did not show the appointment of even a single disabled person during the academic year 1994 and thereafter till the date of the judgment except those made by Ambedkar College. The Court also noticed that various excuses had been given from time to time by the university as also the colleges for their failure to comply with the legal requirements. The university, observed the court, had washed its hands off the issue by saying that in spite of the directions of the Vice-Chancellor to the colleges to comply with the resolution, the colleges had not bothered to do the needful. Another excuse given for non implementation of the reservation was that the UGC had not agreed with the resolution passed by the university. These excuses, the court held, were wholly meaningless having regard to the fact that the Disability Act had come into force which made it mandatory for the respondents to reserve 3% posts for handicap candidates.

Suffice it to say that having found an all round failure on the part of the university as also the colleges in extending the benefit of reservation to those who qualified for the same the Court allowed the writ petition with the following specific directions:-

The respondents are directed to comply with Resolution No. 193/3 dated 16th July, 1994 of the Executive Council of Delhi University w.e.f the date of this Resolution.

1. This exercise should be done to calculate the number of posts which will have to be reserved for visually and orthopedically handicapped persons in terms of the aforesaid Resolution and the provisions of Disability Act and the number of posts which are to be reserved in the aforesaid manner should be earmarked subject wise keeping in view the criteria laid down in OM dated 25th November, 1986.
2. This exercise be done within a period of two months from the date of this judgment.
3. After undertaking the aforesaid exercise of ascertaining the number of posts and earmarking those posts subject wise, steps should be taken to fill up those posts from amongst the handicapped persons by adopting the

selection procedure meant for filling up of such posts. This exercise be completed within a period of six months thereafter.

4. While implementing the decision aforesaid, if numbers of posts are not available, the respondents should have either of the following options:-

- i. to create supernumerary post or
- ii. Terminate the services of those whose appointments were made subject to the decision of this writ petition as per order dated 14th July, 1995 in CM.4271 of 1995. It is simply because the posts which would now be earmarked for handicapped persons were meant for them are occupied by others and thus recruitment not validly made.

Pending this exercise, as per the Resolution dated 16th July, 1994, as one appointment to the teaching post which was to be made during the academic year 1994-95 and the same has not been done till date, be made and the post be filled from amongst the handicapped persons by each college within a period of two months from today. For such appointments, petitioners should also be considered favorably.

Petitioners shall also be entitled to costs. Counsel fee is fixed at Rs.10,000/-. It will be paid by both i.e Delhi University and University Grants Commission in equal proportion i.e. Rs.5,000/- each.

The present writ petition is filed by the petitioner society promoted by a group of disabled persons primarily comprising those suffering from visual impairment and employed in teaching and non-teaching positions in Delhi University. The society, it appears, has been active in various institutions of Delhi and working in larger interest of persons with disabilities. The grievance of the petitioner mainly is that despite the legislative measures and a clear mandate of the law in favor of reservation to the extent of 3% and despite the directions issued by this Court in the judgment referred to earlier, nothing has been done by either the university or the colleges to implement the reservation policy. The petitioner has in that backdrop prayed for a mandamus against the respondents to put in place a hundred point roster for persons with disabilities to ensure that the number of vacancies due to them is worked out on the basis of the cadre strength in each discipline and the same are offered to persons eligible for appointment against the same.

Two other petitions filed by the petitioner's society namely CWP Nos. 1282/2007 and 555/2007 are also pending in this Court in which the petitioner has prayed for somewhat identical reliefs with only one college each made as a party respondent in the same. The challenge in the said petitions, it appears, was limited to the notifications issued by the colleges impleaded as parties to the said petitions for appointment against the post of lecturers. By an order dated 20.2.2007 issued in CWP No. 1282/2007 this Court had while allowing the respondents in the said petition to go on with the process of selection stayed the appointments against the available vacancies. To the same effect is CWP No. 1555/2007 in which also the challenge of the petitioner was limited to quashing of an advertisement issued by one of the colleges affiliated to Delhi University apart from a

mandamus to the effect that the reservation policy should be implemented. By an order dated 28.2.2007 this Court had in that petition also allowed the selection process to continue but stayed the making of appointments against the available vacancies.

When CWP No. 16258/2006 came up before us on 2.4.2007, we directed the listing of CWP Nos. 1282/2007 and 1555/2007 also as the prayers in all the three petitions appeared to us to be identical. That is precisely how the other two writ petitions have also been placed before us today.

Mr. Colin Gonsalves, learned counsel for the petitioners submitted that CWP No. 16258/2006 being a comprehensive petition in which all the colleges affiliated to Delhi University have been made party respondents the petitioner would have no difficulty in withdrawing CWP Nos. 1282/2007 and 1555/2007. He submitted that since the petitioner has the benefit of interim orders in the said two petitions, the withdrawal of the said petitions should not result in any prejudice to the petitioner. This could according to the learned counsel be ensured by this Court by issuing a similar direction in CWP No. 16258/2006. He urged that the resolution passed by the university, the Parliamentary legislation on the subject and the declaration of law by this Court in the judgment referred to earlier notwithstanding, the university as also the colleges affiliated to it had failed to implement the reservation policy with impunity. He submitted that if the ongoing process of selection is not stayed, the petitioner may be presented with a fait accompli leading to avoidable confusion and multiplicity of legal proceedings. He argued that the respondents had not so far come out with any logical explanation for their failure to implement the resolution passed by the university, the legislative provisions made for reservation and the directions issued by this Court which made the present a fit case for this Court to stay the process of selection and appointments to ensure that the rights accruing to the disabled in terms of the university decision as also the legislative enactment are not defeated for extraneous reasons.

On behalf of the respondents it was, on the other hand, submitted that the respondents would place on record their explanation for the delay in the implementation of the reservation policy or non-implementation of the said policy as the case may be. It was further urged that the respondents would file their counter affidavits well before 25.4.2007 when the matter is coming up for hearing again. It was submitted that while the ongoing selection process could be allowed to go on appointments if any made could be made subject to the ultimate result of this writ petition.

We have given our anxious consideration to the submissions made at the Bar. Two distinct aspects emerge from what has been stated in the foregoing paras of this order. The first aspect is that the obligation to reserve 3% vacancies for persons suffering from disabilities is unquestionable. Not only the resolution passed by the university but even the law enacted by the Parliament makes a clear provisions to that effect. To the credit of learned counsel for the respondents, we must say that they did not dispute the existence of the obligation or its enforceability. The other aspect which is equally important and which emerges rather prominently is that the university and the colleges have not yet

satisfactorily demonstrated that they have implemented the resolution passed by the university or the statutory provisions providing for reservation of seats in letter and spirit.

Mr.Gonsalves submitted that only a handful of colleges had implemented either fully or even in part the reservation policy in terms of resolution and the enactment referred to above, he urged that such of the colleges as have already made appointments against the available vacancies to the extent of 3% of the vacancies arising after 1994 by taking the lecturers in different disciplines as 'one single cadre' could be left out of the purview of any interim direction restraining further appointments. Insofar as other colleges where no appointments of any handicap person have been made or the appointments are less than the number of vacancies due to such persons, the college may have to come forward and explain as to how it proposed to abide by the legal obligation. Till such time that is done, the process of appointment could not be allowed to go on as the same would result in avoidable confusion and multiplicity of proceedings.

There is, in our opinion, considerable merit in the submissions made by Mr.Gonsalves. If the obligation to make reservation is unquestionable, the respondents have no option but to demonstrate to the satisfaction of the Court that they have indeed implemented the policy. None of the respondent colleges have, however, filed their counter affidavits so far. We are, therefore, not for the present in a position to determine as to which out of the respondents have implemented the policy and which have failed to do so. All the same we do not propose to prevent such of the colleges as may have already implemented the policy in full from making appointments against available vacancies as any such restraint would adversely affect their teaching programmes and the interest of the students admitted to the same. In cases where the college has not made any appointment of a handicap person against any vacancy reserved in that category where the number of reserved vacancies is less than 3% otherwise reserved under the law, the appointment process shall have to await the orders from this Court.

We are also of the view that the university needs to explain as to what steps have been taken by it to ensure implementation of the reservation policy. It is not in dispute that most of the colleges if not all of them are getting grant in aid from the University Grants Commission. It is also not in dispute that these colleges are all affiliated to the Delhi University. The university, therefore, owes an explanation as to whether any action was taken by it by way of stoppage of the grant in aid to the college who had defied the reservation policy and the directions of this Court or by way of de-affiliating the college as a measure of punishment for its defiance. In case no action was taken, the reasons for its failure shall also be indicated. The Registrar of the University shall, in this connection, fill an affidavit by the next date of hearing. In conclusion, we pass the following order:-

1. CWP Nos. 1282/2007 and 1555/2007 shall stand dismissed as withdrawn. The interim orders issued in the said two petitions shall consequently stand vacated.
2. Such of the colleges out of the respondents as have not implemented the

reservation policy providing for 3% vacancies for persons with disability in terms of the resolution dated 16.7.1994 passed by the university, the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995 and the judgment of this Court in CWP No. 1282/2007 shall not make any further appointments to the available vacancies in the said colleges till 25.4.2007. The selection process initiated by such colleges for filling up the available vacancies can, however, go on subject to the result of these proceedings. We make it clear that the colleges who have filled up a minimum of 3% of the vacancies occurring after the year 1994 in the cadre of Lecturers taking the post in all the disciplines as a part of the same cadre shall be free to make the appointments. Any such appointments shall also be subject to the ultimate result of this writ petition.

3.The University of Delhi shall file an affidavit indicating whether any action has been taken against the defaulting colleges by way of stoppage of grant and/or de-affiliation of the college and in case it has not done so the reason for the omission.

Post on 25.4.2007 as already directed. The respondent colleges shall file their counter affidavit to the writ petition as also objection to the interim application in the meantime.

Order dasti to the parties under the signatures of the Court Master.

T.S.THAKUR,J

S.N.AGGARWAL, J

April 4, 2007