



GAHC010123582016

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7626/2016

SADHANA ROY
D/O SRI KANU ROY R/O VILL- NO. 2 BANTOWGAON P.O. DHAKUAKHONA
DIST. LAKHIMPUR, ASSAM.

VERSUS

STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, ASSAM SECRETARIAT, DISPUR,
GUWAHATI -06.

2:THE DIRECTOR OF SOCIAL WELFARE DEPARTMENT

UZAN BAZAR
GUWAHATI-1.

3:THE DISTRICT SOCIAL WELFARE OFFICER

LAKHIMPUR DISTRICT
NORTH LAKHIMPUR

4:THE CHILD DEVELOPMENT PROJECT OFFICER

DHAKUAKHONA ICDS PROJECT
DHAKUAKHANA



BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner: Shri K.K. Mahanta, Sr. Advocate
Shri N.M. Hazarika, Advocate.

Advocates for respondents : Ms. M. Bhattacharya,
Addl. Sr. Govt. Advocate, Assam

Date of hearing : 03.04.2024

Date of judgment : 22.04.2024

The controversy involved in this writ petition is an allegation of denial of the benefits of the provisions of the Persons with Disability, (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, (hereinafter called the Act), to the petitioner pursuant to a recruitment process for filling up of the post of Supervisor under the Social Welfare Department, Government of Assam.

2. Before coming to the issue, it would be beneficial if the facts of the case are narrated briefly.

3. An advertisement was issued on 24.02.2014 by the Director of Social

Welfare, Assam, for filling up 20 numbers of vacancies in the post of Supervisor. As per the petitioner, she belongs to the category of "Persons with Disability" (herein after PwD) with 40% locomotion disability on her right leg. The petitioner claims to have offered her candidature in the said category pursuant to which, an Admit Card was issued to her and she had appeared in the written test held on 13.12.2015. However, in the results declared on 09.01.2016, the petitioner was not amongst the shortlisted candidates. Subsequently, the *Viva Voce* was held on 19.02.2016 and the final results were declared. The petitioner claims to have submitted an application on 21.04.2016 to the concerned authorities by invoking the provisions of the Right to Information Act, 2005 requisitioning the information of selection and appointment of candidates belonging to the PwD category and on 08.08.2016, information was given to the petitioner that no candidate was selected in the aforesaid category. The petitioner has alleged that the provisions of the Act of 1995 have been grossly violated in the recruitment process initiated vide the advertisement dated 24.02.2014.

4. I have heard Shri K.K. Mahanta, learned Senior Counsel, assisted by Shri N.M. Hazarika, learned counsel for the petitioner. I have also heard Ms. M. Bhattacharya, learned Addl. Senior Government Advocate, Assam, for the respondents. The materials placed before this Court have been duly considered.

5. Shri Mahanta, learned Senior Counsel for the petitioner, by drawing the attention of this Court to the advertisement dated 24.02.2014, has submitted that 20 numbers of vacancies in the post of Supervisors were notified. By referring to the Act of 1995, it is submitted that 3% of the vacancies ought to

be reserved for PwD category and in the instant case, 3% of 20 vacancies would amount to 0.6% which is to be treated as 1 (one) vacancy. However, not a single person under the PwD category has been selected and therefore, the mandate of the Act of 1995 has been grossly violated. Reference has also been made to an order dated 18.10.2023 of this Court directing the production of records, pursuant to which the records were produced and in fact, the same in the form of a compact disc was also made available to the petitioner through her counsel. The petitioner had accordingly filed an affidavit after scrutinizing the records. It is submitted that from the records it would be available that two candidates belonging to the PwD category had participated in the said recruitment process. It is also submitted that the cadre strength of Supervisors (regular) is 1294 and therefore 3% would otherwise mean that approximately 39 posts are reserved for persons belonging to PwD category.

6. With regard to the disability of the petitioner, the learned Senior Counsel has referred to a Disability Certificate dated 06.05.2005 which has been annexed to the writ petition. Reference has also been made to an Unique Disability ID of the year 2020 and it has been contended that in view of the fact that the petitioner belongs to the category of PwD, appropriate directions be issued for consideration of her case and consequent appointment as a Supervisor in the Department.

7. The Senior Counsel has clarified that the candidature of the petitioner was never rejected on the ground that her claim to be belonging to PwD category was doubted. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of **Vikas Kumar vs. Union Public Service**

Commission & Ors. reported in (2021) 5 SCC 370.

In the said case, the Hon'ble Supreme Court while considering the Act has made the following observations:

“44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember Justice R M Lodha’s (as he then was) observation in Justice Sunanda Bhandare Foundation v. Union of India[(2018) 2 SCC 397], where he stated:

“9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...”

8. Reliance has also been placed upon the case of ***Saidur Rahman vs. State of Assam*** reported in **2022 (2) GLT 628** in which this Court, while considering the aspect of further reservation of post belonging to PwD to

candidates belonging to OBC / MOBC / ST(H) had held that the mandate of the Act requiring filling up of 3 % of the posts by candidates belonging to the PwD category was to be strictly followed.

9. The learned Senior Counsel accordingly submits that the petition be allowed and the benefits be given to the petitioner of appointment as Supervisor pursuant to the recruitment drive initiated by advertisement dated 24.02.2014.

10. *Per contra*, Ms. Bhattacharya, the learned State Counsel has submitted that the projection of facts by the petitioner is not at all correct. She has submitted that though the issue projected is that the Act of 1995 has not been followed, the materials on record would not reflect that the petitioner had even applied under the aforesaid category of PwD. The learned State Counsel clarifies that in connection with a Vigilance case, all the records are in the custody of the investigating team and only pursuant to an order of this Court, certain documents could be obtained. Further, inspection of the said documents was also allowed to be done by the counsel for the petitioner who was also handed over a compact disc based upon which, the petitioner an affidavit has been filed. It is submitted that the application of the petitioner pursuant to the advertisement has not been annexed and the said application would have been crucial to determine the claim that the petitioner had actually applied under the category of PwD. The learned State Counsel has also drawn the attention of this Court to the Call Letter issued to the petitioner which only mentions the petitioner to be an OBC candidate and there is no mention that she had applied as a PwD candidate.

11. As regards the application said to have been filed by the petitioner subsequently, it is the contention of the learned State Counsel that the aforesaid is only a representation to consider her case and there was no claim as such to consider her as a candidate belonging to the PwD category. The learned State Counsel has submitted that the category of a candidate can be ascertained only from the concerned and relevant documents which are not annexed to the writ petition. It is pointed out that the Disability Certificate relied upon is dated 06.05.2005 with a stipulation that the same would be valid for three years and therefore after 06.05.2008, there was no valid Certificate and the advertisement in question is of the year 2014. The Unique Disability ID which has been brought on record by way of additional affidavit is of the year 2020 which is much after the recruitment process and therefore, could not have been a relevant consideration by the authorities. It is submitted that in the additional-affidavit filed in the year 2024, only a statement has been made that the petitioner belongs to the PwD category and there is no such statement in the writ petition. It is also contended on behalf of the State that there has been further recruitment process in which, however, the petitioner did not participate in spite of being within the permissible age. It is accordingly submitted that no relief is entitled to by the petitioner.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

13. The entire projection on the part of the petitioner is on the allegation of violation of the provisions of the Act of 1995 and in that connection, reliance has also been placed upon the cases of **Vikash Kumar** (supra) and **Saidur**

Rahman (supra). There is absolutely, no dispute to the proposition that the provisions of the Act are mandatory in nature. However, it transpires from the facts and circumstances that there is a serious dispute as to whether the petitioner had actually applied under the PwD quota.

14. To resolve the said dispute, this Court has looked into all the materials placed on record and the pleadings of the rival parties. There is no statement in the writ petition that the petitioner had applied under the PwD category pursuant to the advertisement dated 24.02.2014. The application of the petitioner has also not been annexed. What has been annexed is Annexure - 5 which is a subsequent representation dated 18.03.2024 wherein however, a mention has been made that the petitioner is a physically handicapped, qualified and unemployed girl and prayed for the aforesaid appointment. The connected pleadings is made in paragraph 7 of the writ petition which has been verified in the accompanying affidavit as true as per information derived from the records.

15. As regards the materials placed on record towards the claim of falling in the category of PwD, the petitioner has annexed an Identity Card as Annexure 1, the date of issue being 06.05.2005. There is a clear stipulation in the said Identity Card that it would be valid up to 3 (three) years that apart, there is also a clarification that it was to be issued only for children below 18 years of age. However, the date of birth of the petitioner has been given as 01.03.1986 which means that she was above 18 years at that time and was otherwise also not eligible for receipt of such Identity Card. Further, in the "Instructions" appearing on the said Card, it has been specified that the eligibility is only to claim concessions / benefits by Central Government, State Government and Statutory

Bodies etc. Therefore, for all practical purposes, the said Identity Card would not be of any consequences towards the claim of the petitioner in the present case.

16. As indicated above, the petitioner has also brought on record a Unique Disability ID which has been annexed to the additional affidavit filed in this case by the petitioner on 04.01.2024. The said Unique Disability ID has been issued only on 03.09.2020 which is much after the advertisement of 2014 and therefore, would be of no relevance as the same was not a matter of consideration at the time of the decision making process. This Court has also noticed that the relevant pleadings in the said additional affidavit is made in paragraph 9 which has also been verified as true to the information derived from records. Though statements made in a rejoinder affidavit can be treated as part of the pleadings as laid down by the Hon'ble Supreme Court in the case of ***Sri-la-Sri Subramana Desika Gnanasambanda Pandarasannadhi v. State of Madras*** reported in ***AIR 1965 SC 1578*** the aforesaid statements made in the present case would be of no aid to the petitioner.

17. The other materials from which the category under which the petitioner had applied for the appointment is the Admit Card which has been annexed as Annexure 6. The same clearly reflects the category as OBC and there is no reference, whatsoever of PwD.

18. This Court has however noticed that in the first affidavit in opposition filed by the Director, Social Welfare, Assam on 21.01.2019, a stand has been taken in paragraph 4 that there cannot be any post reserved which would come under 3 % of the 20 nos. of vacancies. The said stand apparently is fallacious for more

than one reason. The quota reserved which is horizontal in nature has to be worked out *vis-a-vis* the cadre strength in the concerned post of Supervisor and even if such reservation is worked out from the perspective of the number of vacancies, the figure would be 0.6 which is required to be construed as 1 (one). That being the position, though the issue involved is of importance, the same cannot be examined at the instance of the present petitioner who could not show any materials that she belonged or had applied in the said recruitment process as a PwD candidate.

19. It is a settled law that in exercise of the certiorari jurisdiction bestowed by Article 226 of the Constitution of India, the ambit of judicial review is to be restricted only to the decision making process. It is a prerogative writ which is to be issued only in extra ordinary circumstances. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the recent decision of ***Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors reported in (2023) SCC Online SC 996*** has laid down as follows:

“49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers

of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."



20. This Court also finds force in the contention of the learned State Counsel that after the concerned recruitment process in the year 2014, there has been subsequent recruitment process by the Department and though the petitioner was aged about 32 years at the time filing of the writ petition as admitted in the affidavit and was eligible, she did not participate in any of those subsequent recruitment process.

21. Under the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference is made out and the writ petition is accordingly dismissed.

JUDGE

Comparing Assistant