



न्यायालय मुख्य आयुक्त निःशक्तजन
In the Court of the Chief Commissioner for Persons with
Disabilities

सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.947/1011/12-13

Dated:- 20.06.2013

In the matter of:

R 4306
Dr. Anil Kumar Aneja, Vice President,
All India Confederation of the Blind,
Braille Bhawan,
(Behind Rajiv Gandhi Cancer Hospital),
Sector 5, Rohini, Delhi-110085

..... Complainant

Versus

R 4307
The Secretary,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110092.

..... Respondent No. 1

R 4308
The Secretary, Services Department,
Government of NCT of Delhi,
Delhi Secretariat Complex,
I.P. Estate, New Delhi-110002.

..... Respondent No. 2

R 4309
The Director,
Directorate of Education,
Government of NCT of Delhi,
Old Secretariat, Delhi.

..... Respondent No. 3

Case No. 962/1011/12-13

In the matter of:

R 4310
Shri S.K. Rungta, General Secretary,
National Federation of the Blind,
Plot No. 21, Sector VI,
M.B. Road, Pushp Vihar,
New Delhi-110017.

..... Complainant

Versus

The Secretary,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110092.

..... Respondent No. 1

The Secretary, Services Department,
Government of NCT of Delhi,
Delhi Secretariat Complex,
I.P. Estate, New Delhi-110002.

..... Respondent No. 2

.....2/-

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें।)
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The Director,
Directorate of Education,
Government of NCT of Delhi,
Old Secretariat, Delhi.

..... Respondent No. 3

Date of hearing : 17.06.2013

Present :

1. Dr. Anil Kumar Aneja, complainant.
2. Shri Yogesh Jain, Assistant Director (Education) and Shri Inder Sain, Gr.II, Services Department, Delhi Sachivalaya on behalf of Respondent.

ORDER

Dr. Anil Kumar Aneja, Vice President, All India Confederation of the Blind, Delhi and Shri S.K.Rungta, General Secretary, National Federation of the Blind, Delhi (Case Nos. 947/1011/12-13 and No.962/1011/1213 respectively) filed complaints dated 08.03.2013 and dated 20.03.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding not reserving of vacancies for persons with visual impairment.

2. The complainants submitted that Advertisement No. 01/13 issued by Delhi Subordinate Services Selection Board for filling up various posts under Government of NCT of Delhi, New Delhi Municipal Council, East Zone Municipal Corporation of Delhi, North Zone Municipal Corporation of Delhi, South Zone Municipal Corporation of Delhi was issued in violation of Section 32 and 33 of the Act. They stated that vacancies were not reserved for persons with visual impairment in many advertised posts especially for the post of Special Education Teacher (Post Code 01/2013) and Junior Social Education Teacher (Post Code 23/2013).

3. The matter was taken up with the Secretary, Delhi Subordinate Services Selection Board, Delhi with copies to the Directorate of Education, Govt. of NCT of Delhi, Services Department, Govt. of NCT of Delhi, Secretary to the Govt. of India, Ministry of Social Justice & Empowerment and Chairman, Rehabilitation Council of India vide this Court letter dated 12.03.2013 in Case No.947/1011/12-13 and letter dated 11.04.2013 in Case No.962/1011/12-13 to submit their comments on the above complaints as to why vacancies have not been reserved for persons with visual impairment in all the advertised posts.

4. In the meanwhile, the complainant informed telephonically that though DSSSB has issued Roll Numbers to some persons with visual impairment and though names of candidates with visual disability figure in the list of eligible candidates as posted on the DSSSB's Notice Board, the DSSSB has not to issue them Admit Cards for examination to be held on 28.04.2013. The complainant, therefore, requested this Court on phone for taking necessary action in the matter.

5. As no reply was received from the respondent, this Court vide letter dated 26.04.2013 directed the respondent to the effect that as the case is pending before this court, the candidates with visual impairment may be issued the Roll Numbers as well as the Admit Cards and be allowed to appear in

(Signature)

the examination, subject to the outcome of the complaints pending before this Court and fixed the case for hearing on 17.06.2013.

6. The Deputy Secretary (P&P), Delhi Subordinate Services Selection Board, Delhi vide letter No. F.1(135)/P&P/2010/3369 dated 08.04.2013 and F.No.1(135)/P&P/2010/135-137 dated 26.04.2013 submitted that Delhi Subordinate Services Selection Board is an attached office of the Services Department, Government of NCT of Delhi. The Board has been set up with the main objective to make recruitment to various posts of Group 'B' (Non Gazetted) and Group 'C' categories in Govt. of NCT of Delhi, MCD, NDMC and autonomous bodies under the Govt. of NCT of Delhi. The Board makes recruitment to various posts as per the requisition of User Department & recommends names of suitable candidates to the User Department. The User Department identifies the posts to be reserved for disabled persons on the basis of job requirement and works out the horizontal reservation in the roster. The responsibility of maintaining reservation roster and identification of post suitable for disabled persons lies with the User Department. Hence any correspondence in this regard may be made with concerned department only. The DSSSB vide letter F.No.1(135)/P&P/2010/138/3924 dated 26/29.04.2013 also submitted that as per Requisition of Director of Education, NCT of Delhi in respect of post of Special Education Teacher (Post Code 1/13), examination scheduled on 28.04.2013 is identified suitable only for OH category. Therefore, the Board has not issued admit card to any visual disabled persons.

7. The Assistant Director of Education(Estt.-IV) vide letter No.F.DE.40(20)09/IEDC/306/2623 dated 26.04.2013 submitted that their office sent a requisition of 927 posts of Special Education Teacher to DSSSB which was advertised by DSSSB vide post code 64/11 in advertisement No.01/2011, however, the whole advertisement notice of DSSSB containing the vacancies of Special Education Teacher (post code 64/11) was scrapped by Hon'ble High Court of Delhi in WP(C) 3411/2012 case titled "All India Confederation of Blind Vs DSSSB & Ors. In pursuance of the Hon'ble High Court order, the DSSSB vide letter dated 27.06.2012 requested the Directorate of Education, NCT of Delhi to send a fresh requisition for the post of Special Education Teacher after identifying whether the post of Special Education Teacher is suitable for disabled persons in accordance with the notification dated 18.01.2007 and 15.03.2007 issued by Ministry of Social Justice & Empowerment, Govt. of India. Accordingly, Directorate of Education, NCT of Delhi sent a fresh requisition for 927 posts of Special Education Teacher to the Chairman, DSSSB vide letter dated 10.09.2012 informing that post of Special Education Teacher is identified suitable for persons with disability only for Orthopadically Handicapped category as per Notification dated 15.03.2007 at S.No.82 listed as 'Special Educator' issued by Ministry of Social Justice & Empowerment. In view of the above facts, it is clear that Directorate of Education sent requisition to DSSSB after identifying the suitability of appropriate category of persons with disabilities i.e. Orthopadically Handicapped which is in accordance with the Notification issued by Ministry of Social Justice & Empowerment. As such, the respondent contended that the allegations made by Dr. Anil Kumar Aneja and Shri S.K. Rungta, complainants are not justified and sustainable as per prevailing instructions in this regard and complaints may be filed accordingly.

8. The Joint Secretary (Services), Govt. of NCT of Delhi vide letter No.F.16(3)/DSSSB/2013-S.III/1433 dated 02.05.2013 submitted that the Services Department is the administrative head of DSSSB, however, the Board is only an attached office of Services Department and this Department does not interfere in the recruitment/selection process/examination conducted by DSSSB. Further, it is stated that the matter under reference solely concerns the Directorate of Education which is the User Department and Delhi Subordinate Services Selection Board which is the recruiting agency for all the departments of Govt. of NCT of Delhi. The DSSSB and the Directorate of Education have already been requested to take necessary action on emergent basis.

9. On the date of hearing, reiterating his written submissions, following were amongst the points which the complainant Dr. Anil Kumar Aneja has emphasized :-

- (a) That the act of treating the post of Special Education Teacher as not identified for persons with visual disability is violative of the fundamental principle enunciated in Government's Notification No.16-25/99-NI-I dated 31.05.2001, which among other things, states that nomenclature used for respective jobs in these recommendations should also mean and include any nomenclature used for the comparable posts with identical function of the identified posts.
- (b) That as per said Notification, the identification of posts is only illustrative and not exhaustive.
- (c) That the fact remains that the Special Education Teacher is trained for teaching students belonging to specific categories of disabilities and that the syllabus of Special Education teaching courses does not cover training in all categories of disabilities.
- (d) That the Rehabilitation Council of India which is a statutory body set up under the RCI Act, 1992, is manned to regulate and standardize the training of rehabilitation professionals which includes Special Education Teacher as well. Referring to category No. 5 "Special Teacher to teach the handicapped" of the CRR, it was stated that the visually impaired persons completing the Degree/Diploma in special education are also registered as Special Education Teachers by the RCI in this category.
- (e) That since the respondent (DSSSB) has recruited around 600 candidates against the advertised number of 927 vacancies for the post of Special Education Teacher, declaring this post as identified for the visually impaired and providing 1% reservation to the visual disability category, will not prejudicially affect the interests of any other party.
- (f) That the complainant submitted a copy of the advertisement No.1/2012 issued by the DSSSB in which the post of Special Educator in MCD is identified for the visually impaired. He argued that once an appropriate government declares any post

identified for a particular disabled category, it cannot be de-identified without giving good reasons. In other words, if one arm of the same appropriate govt. reserves the post for the person with visual disability, the other arm cannot refuse for the same more particularly, when the recruitment exam in both the organizations is conducted by DSSSB.

- (g) That the complainant also submitted the list of RCI Courses in Special Education which are disabilities specific to prove his point that each RCI Course is disability specific and that there is no Course which imparts training in all disabilities.
- (h) That the DSSSB had put up the names of various visually impaired persons as eligible to receive the Admit Cards in April, 2013 but the same were not given to the concerned candidates.
- (i) That irrespective of the identification or otherwise of the post, no candidate with disability can be debarred from competing in the Open Category as per the principle enshrined in Article 14 of Constitution of India and Article 27 of the UNCRPD.

10. The representatives of the respondents submitted that Services Department is administrative Head of DSSSB. However, Services Department has never interfered in the recruitment/selection process/examination conducted by DSSSB. Further, it was submitted that the matter under reference concerns the Directorate of Education which is the User Department and DSSSB which is the recruiting agency for all the Departments of Government of NCT of Delhi.

11. The representative of Directorate of Education submitted that the Directorate of Education had sent a requisition to DSSSB after identifying the posts of the appropriate category of persons with disability i.e. Orthopaedically handicapped which is in accordance with the Notification No. 16-70/2004-D.D.III dated 15.03.2007 at Sr. No. 82 listed as Special Educator issued by the Ministry of Social Justice & Empowerment.

12. After a careful perusal of all the written submissions made by all concerned, and after hearing out the complainant and the respondents, this Court observes as follows:-


- (a) It is important to ensure strict adherence to the principle enunciated in Government Notification No.16-25/99-NI-I dated 31.05.2001 which essentially says that a given post has to be treated as identified if another post having a similar job description but a different nomenclature is identified. In the instant case, it appears that the post of Teacher of different descriptions already stands identified for the blind/low vision with the result that there is no reason why the post of Special Education Teacher should not be treated as identified for such people; more particularly, in the face of the fact that the job description is essentially the same in both cases.
- (b) The principle that the list of identified posts is only illustrative and not exhaustive, necessarily implies that posts other than those which have been explicitly mentioned on the list of identified jobs should also be treated as identified in appropriate cases.

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- (c) The list of identified posts vide Government's Notification No. 16-25/99-NI-I dated 31.05.2001 does not explicitly identify the post of Special Education Teacher for persons with visual disability; but the fact remains that the job description of the said post is very much akin to the posts of Teacher of different descriptions.
- (d) The Court is convinced that in any event a Special Education Teacher is trained to impart education to students belonging to a specific category of disability and not to students belonging to all categories of disabilities.
- (e) While this Court cannot arrogate to itself the power of identifying posts for persons with disabilities, it is well within the remit of this Court to adjudicate upon and interpret the violation or otherwise of any existing laws, rules, norms, policies etc. This Court is convinced that in the instant case, the principle of treating a post identified if it carries a similar job description though a different nomenclature appears to have been violated.
- (f) With reference to complainant submission in (h) above, it is clarified that no person with disability can ever be denied the right to apply, compete and, if selected, get recruited to any post in the open category irrespective of whether it is reserved or not.

13. In the above view of the matter, the respondents DSSSB, Government of NCT of Delhi and Directorate of Education, Govt. of NCT of Delhi are hereby advised to actively consider treating the post of Special Education Teacher as identified for persons with visual disabilities as well within a period of two months from the date of receipt of this order by them. They are further advised to allow those candidates with visual disabilities to sit in the immediately following recruitment process who had applied for the post of Special Education Teacher but were not allowed to take relevant examination.

14. The matter stands disposed of.


(P. K. Pincha)
 Chief Commissioner
 for Persons with Disabilities

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