

Orissa Association for the Blind and ors. Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Oct-16-2004

Reported in : 98(2004)CLT716; [2005(104)FLR516]

Judge : B.P. Das, J.

Acts : [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#) - Sections 33

Appeal No. : Original Jurisdiction Case No. 4856 of 2001

Appellant : Orissa Association for the Blind and ors.

Respondent : State of Orissa and ors.

Advocate for Def. : S.N. Mishra, ;R. Behera, ;K.C. Kanungo, S. Behera, ;P.K. Patnaik and ;B. Das, Advs.

Advocate for Pet/Ap. : B. Routray, ;P.K. Dash, ;B.B. Routray, ;D. Routray, ;P. Sinha, ;D. Mohapatra, ;P.K. Nayak and ;P.S. Jena, Advs.

Disposition : Petition allowed

Judgement :

B.P. Das, J.

1. Orissa Association for the 'Blind (hereinafter called 'the Association') represented through its General Secretary Shri Binod Bihari Sahoo and two of its members, claiming to be espousing the cause of blind persons, have filed this writ application challenging the action of the opp. parties, i.e.. the State and its officials, in not considering the blind candidates for their engagement as Swechhasevi Sikshya Sahayaks (shortly 'S.S.S.') in primary and upper primary schools in the State under the reservation meant for them in accordance with the instructions/resolutions issued by the State Government. The petitioners have prayed for issuance of a writ in the nature of mandamus directing the opp. parties to give appointment to the trained/untrained blind candidates as per the list, Annexure-2 and similar other candidates as SSS relaxing C.T./B.Ed. training qualification under 1% reservation quota. It is stated that the Association is registered under the Societies Registration Act and affiliated to the National Association for the Blind, Bombay, and All India Confederation of the Blind, New Delhi.

2. The facts as narrated in the Writ Application tend to reveal that Opp. Party No. 3 the Director of Elementary Education, Orissa, issued an advertisement, in a local Oriya daily dated 16.10.2000, Annexure-1 inviting applications from eligible candidates within the age group of 18-42 years for engagement as SSS in the primary and upper primary schools in different districts of the State. In the advertisement, the minimum educational qualification prescribed for the post is 'Matric with CT training/Graduation with B.Ed. training. As regards reservation, it has been, inter alia, indicated therein that in addition to the ORV Act, the rules framed by the State Government regarding reservation for candidates belonging to ex-servicemen, handicapped and eminent sports personnels shall be made applicable. Pursuant to the aforesaid advertisement, several candidates submitted applications for engagement as SSS through their respective Collectors-cum-Chief Executives of the Zilla Parishads of the districts. The petitioners have annexed a list of blind candidates with their educational qualifications, who have applied for engagement as SSS under the reservation made for them as Annexure-2. As it appears, out of the candidates named in Annexure-2 Suresh Biswal and Rabindra Kumar Sahoo possess B.Ed, qualification and some other candidates have even completed the training in Diploma in Education ('D.Ed.') from the National Institute

for the Visually Handicapped, Dehradun, which is an Institute established and run by the Ministry of Social Justice and Empowerment of the Government of India. According to the petitioners, D.Ed, course is provided at two different levels, i.e., primary level and secondary level, and both the training courses are of 10 months duration.

The grievance of the petitioners is that even though the blind candidates are entitled to be engaged as SSS under the reservation meant for them, they have been denied the same, which is in clear violation of the resolutions/circulars of the State Government as well as the statutory provisions made in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called '1995 Act').

To substantiate their claim, the petitioners have annexed several documents. It is stated that in order to provide all possible opportunities to the physically handicapped to develop their own personality and economic independence, the State Government in the erstwhile Political and Services Department, in the light of the decision of the Government of India providing reservation of 1% in the vacancies for rehabilitation of the physically handicapped persons in public service, also made a Resolution dated 24.7.1978 which was published in the extraordinary issue of Orissa Gazette on 7.8.1978 (Annexure-3). In the aforesaid Resolution, the State Government while granting concession to the physically handicapped persons in the matter of employment in public service decided that not less than 1 % of the vacancies in different services/posts under the Government to which direct recruitment is made shall be reserved to be filled up by qualified disabled persons as defined in Paragraph 3 which is as follows :

'3. The 'physically handicapped' means and includes the following categories of physically handicapped persons.

(A) Blind. The Blind are those who are suffering from any of the following conditions :

(a) Total absence of sight.

(b) Visual acuity not exceeding 6/60 or 20/200 (Annellan) in the better eye with correcting lenses.

(c) Limitation of the field of vision substanding at angle of 20 degrees or worse.

(B) Deaf: *** (C) Orthopaedically handicapped : (D) Speech Defective : ***
***.'

It is stated that in the said Resolution under Paragraph 12 certain concessions were allowed to the physically handicapped persons for their eligibility for appointment to the posts and services under Government reserved for them, namely :

'(1) 5 percent of marks wherever minimum percentage of marks in any examination is prescribed.

(2) The condition of training/test/experience, wherever prescribed, shall not apply to the physically handicapped persons for appointment to posts reserved for them.

Where a particular training is essential for appointment to a post, the physically handicapped person shall complete such training within 2 years from the date of appointment.'

It is stated by the petitioners that the State Government in the General Administration Department issued a further Resolution dated 4.5.1981 which was published in the Orissa Gazette on 12.8.1981 vide Annexure-4. From the aforesaid Resolution it appears that the Government of India further decided that for the purpose of employment of the blind, deaf and orthopaedically handicapped persons in Group C and D posts and services, 1% of the vacancies shall be kept reserved for each of the aforesaid categories of persons. In the aforesaid Resolution it is stated that :

**** 2. Government of India have now, on consideration of the matter, have decided that for the purpose of employment of the blind, the deaf and the orthopaedically handicapped persons, the reservation in Groups C and D posts and services for physically handicapped persons should be made to the following

extent under the Central Government.

Category of the handicapped Percentage reservation

(1) The Blind 1%

(2) The Deaf 1%

(3) The Orthopaedically handicapped 1%

3. Accordingly it has been decided by the State Government that the reservations for filling the Class III and Class IV post and services under the State Government and Public Sector Undertakings which correspond to Groups C and D posts/services under the Central Government should be made for rehabilitation of physically handicapped persons of the above categories. The categorization of physically handicapped persons for employment will be on the basis of definition as per Annexure-I.*** **'

The Resolution in Annexure-4 defines 'Blind' as follows :

'The Blind:

The blind are those who suffer from either of the following conditions :

(a) Total absence of sight.

(b) Visual acuity not exceeding 6/60 or 20/200 (Annellan) in the better eye with correcting lenses.

(c) Limitation of the field of vision subtending an angle of 20 degrees or worse.'

The aforesaid Resolution, Annexure-4 categorizes the 'Job in Groups Class III and Class IV Posts and Services Suitable for the Physically Handicapped'. So far as blind and partially blind are concerned, the followings are the jobs suitable.

'V. Blind: Announcers at Railway Stations, Bus Stops and Airports (T), Cane Weavers (T), Instrumentalists (Staff Artists) (T), Messengers (T), Musician (T), Music Teachers (T), Office Superintendents (H), Packers (T) Stenographers (with

Dictaphone and Digital Type-Writers), Teachers (Primary T & A), Telephone operators) (Small Boards with Electronic Beep and Embossed Digits), Lathe Operators, Press Operators, Stampers, Weavers, Packers, Drillers, Filors, Chippers, Teachers in Social Sciences.

VI. Partially Blind: Dak Messengers, Despatch Clerk (T), Gardeners (T), Gestetener Operators (T&A;), Liftmen (T& Digital controls), Peons, Receptionist, (T & A), Retiring Room Attendants, Sweepers, Water man (T), Waiting room Attendants, Lottery Ticket Sellers.'

It is submitted by the petitioners that the aforesaid clearly reveals that blind persons can be appointed as Teachers (Primary T & A) and 'Teachers in Social Sciences'.

The petitioners allege that even though the above is the policy of the State Government the aforesaid guidelines in the Government Resolution, Annexure-4 have not been adhered to by the opp. parties thereby the opp. parties have deliberately and wilfully ignored the candidature of the blind persons for their engagement as SSS.

Further attention of this Court was drawn to a communication dated 7.1.1986 of the Deputy Secretary to the Government of Orissa, Education and Youth Services Department, made to the Secretary, Selection Board, Annexure-5 Wherein it has been stated that the reservation of vacancies in Class III and Class IV posts for blind, deaf and orthopaedically handicapped is 1 % each. The aforesaid letter also says 'blind persons are eligible for appointment as Primary School Teacher and for the post of Teachers in Social Science.'

While disposing of a representation of the petitioner-Association relating to appointment of, blind candidates in normal schools, the Commissioner-cum-Secretary, Women and Child Development Department, by DO letter dated 6.11.2000 addressed to the Commissioner-cum-Secretary to Government in School and Mass Education Department, Annexure-6 clearly indicated that 3% of posts of primary school teachers (Sikshya Sahayaks) were reserved out of which 1 % was earmarked for the blind. The Commissioner-cum-Secretary, Women and

child Development Department, also pointed out to the Commissioner-cum-Secretary Schools and Mass Education Department, the provisions of Section 33 of the 1995 Act and requested to ensure that the reservation provided under the 1995 Act is strictly followed and the vacancies are duly filled up through eligible physically handicapped persons. According to the petitioners, even though blind candidates can be appointed as Teachers in Primary (T & A) and Teachers in Social Sciences, the action of Opp. Party Nos. 5 to 16 in not considering the case of the blind for engagement as SSS is illegal and in gross violation of the provisions of the 1995 Act as well as in contravention of the Resolution of the State Government in Annexure-4. Hence, the Writ Petition and the prayer as indicated in the foregoing paragraph.

3. In opposition to the allegations of the petitioners, a counter affidavit has been filed by Opp. Party No. 1 State of Orissa represented through the Secretary, Schools and Mass Education Department, taking a stand that the Writ petition filed in the garb of Public Interest Litigation is not maintainable in law but the aggrieved party should have approached this Court for appropriate relief. It is further stated that the Government has issued advertisement to engage candidates as SSS in primary and upper primary schools in different districts of the State, wherein in addition to the qualification required for the above posts, the duties of SSS have been clearly indicated. According to Opp. Party No. 1 blind persons are not suitable for being engaged as SSS as the work of SSS is not confined to teach the children, but they are also required to motivate the parents to get their children admitted into the schools. According to the State, it is not possible on the part of the blind persons to carry out the objectives of the SSS Scheme. In the counter affidavit, the State Government has mainly relied upon a report submitted by the Principal of DPIASE, Berhampur, (Annexure-C/3) wherein it is stated that the performance of blind candidates as trainers is not at all encouraging and due to visual deformity they are not eligible to perform the duties of a normal, teacher. Basing on the aforesaid report, Opp. Party No. 1 has tried to justify the action in not considering the case of the petitioners for engagement as SSS.

4. The petitioners have also filed an affidavit in reply to the counter filed by Opp. Party No. 1 wherein while reiterating their stand taken in the Writ. Petition they

have stated that the State Government in General Administration Department issued a circular dated 8.9.1999 to all the Departments of the Government/Heads of Departments/Collectors, vide Annexure-13 requesting them to take necessary steps to expedite appointment of visually handicapped persons against the reservation made for them in accordance with the instructions issued in GA Department Resolutions dated 4.5.1981 and 16.7.1982 regarding reservation of vacancies for rehabilitation of physically handicapped persons in Class III, Class IV posts and in Class II gazetted posts and specially gazetted posts/services under the State Government and in Public Sector Undertakings. It is further submitted by the petitioners that the State Government has not made any notification in the Official Gazette exempting any establishment, particularly the Schools and Mass Education Department, from the application of the provisions of Section 33 of the 1995 Act and, therefore, the blind candidates are entitled to be appointed as SSS in terms of the circulars/resolutions of the State Government.

5. As regards maintainability of the Writ Application, I am not inclined to accept the objection raised by the opp. parties on the locus standi of the petitioners to file this Writ Application as it concerns a large number of physically handicapped persons for engagement as SSS,

6. Considering the rival contentions of the Learned Counsel for the parties, it is to be examined whether the opp. parties are justified in not selecting the blind candidates for engagement as SSS. On going through the entire counter affidavit filed on behalf of Opp. Party No. 1-State, I find that the State Government has not produced a single document wherefrom it can be found that a decision has been taken by the Government not to keep any post of SSS reserved for the blind as they are not suitable. Rather, the entire resolution of the Government Annexure-4 and the letters of the State Government in Education and Youth Services Department dated 7.1.1986 and 7.2.1986 (Annexure-5 and Annexure-9 series respectively) as well as the letter of Opp. Party No. 2 (Annexure-6) indicate otherwise and support the stand taken by the petitioners. Fact remains, in the resolution dated 24th July, 1978 (Annexure-3) a decision was taken by the State Government that not less than 1 % of the vacancies in different services/posts under the Government to which direct recruitment is made shall be reserved to be

filled up by qualified disabled persons. It is also a fact that by a subsequent resolution dated 4.5.1981 Annexure-4 the State Government adopted the decision taken by the Government of India making reservation of 1% of the vacancies in Class III and Class IV posts/services for each of the three categories of physically handicapped persons, namely, the deaf, the blind and the orthopaedically handicapped.

It is worthwhile to mention here that the Central Government enacted the 1995 Act, [i.e., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996)] which came into force with effect from 1st January, 1996. Section 33 of the 1995 Act provides that :

'Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent, 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;

(c) locomotor disability or cerebral palsy, in the posts identified for each disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.'

Sub-section(s) of Section 2 of the 1995 Act defines 'notification to mean 'a notification published in the Official Gazette.'

Nothing was brought to the notice of this Court that any notification issued by the State Government in terms of Section 33 of the 1995 Act was-published in the Official Gazette exempting the Department of School and Mass Education from the application of the provisions of said Section 33. Rather it reveals from the letter dated 7.1.198 of the Deputy Secretary to Government in Education and Youth

Services Department addressed to the Secretary, Selection Board, Annexure-5 that blind persons are eligible for appointment as Primary School Teachers and Teachers in Social Sciences. That too, Annexure-6 to the Writ Application clearly indicates that there is a conscientious decision of the State Government to appoint blind persons in normal schools. But the stand of the State is that the duty of SSS is more than that of a teacher, which shall not be possible on the part of a blind person to perform.

7. In this regard Learned Counsel for the State has referred to the resolution dated 24th July, 1978 annexed to the counter affidavit as Annexure-A/1 which is also relied upon by the petitioners and annexed to the Writ Petition as Annexure-3. Learned Counsel for the State submits that as per Paragraph 8 of the aforesaid resolution, each Department of the Government shall fill up the posts in different categories reserved for the physically handicapped after having due assessment of the nature and functional requirement of each category of post under them and having regard to functional suitability of each category of physically handicapped, as indicated, in Para 3 thereof.

8. Be that as it may, nothing has been shown before this Court that the State Government has taken any decision not to appoint the blind persons nor anything to show that any action has been taken by the Government, as I have already stated earlier, to exempt the School and Mass Education Department from the application of the provisions of Section 33 of the 1995 Act. That apart, to their rejoinder affidavit, the petitioners have annexed a letter dated 8.9.1999 (Annexure-13) issued by the GA Department of the State Government to all Departments of Government all Heads of Departments and all Collectors requesting them to take effective steps in accordance with the instructions contained in the G A Department resolution dated 4.5.1981 (Annexure-4) for appointment of visually handicapped persons against the reservation made for them.

9. Learned Counsel for the State has relied upon the letter of Principal, Dibakar Patnaik, IASE dated 23.6.2000 addressed to the Director, T.E. and S.C.E.R.T., Orissa, annexed as Annexure-C/3 to the counter affidavit. The said letter indicates that in general, the blind candidates should not be recruited as teachers because

they cannot ensure effective pupil interaction, cannot use the blackboard and cannot handle audio-visual aids, those three being the most important skills needed for teaching. This letter of the Principal of the aforesaid institution cannot override the resolution of the Government, which simply outweighs the object of the State Government regarding engagement of visually impaired person. The so-called expert's opinion relied upon by the State cannot override the statutory provisions made in the 1995 Act. Rather the decisions taken by the State Government at different points of time support the case of the petitioners. The affidavit filed by the Government Official runs contrary to the declared policy of the State. This being the position and there being no decision of the Government to debar the visually impaired, who are included in the physically handicapped category, from being engaged as SSS there was no reason for the State Government and its officers not to consider the case of the petitioner-Association as well as such other applicants for engagements as SSS.

10. After having heard Learned Counsel for the parties and upon examining the various documents filed by the parties, I have no other alternative but to hold that there is neither any statutory notification nor any resolution of the State Government to debar the blind candidates from being engaged as SSS for which they have applied, if they are otherwise eligible for the same.

11. In the result, I allow this Writ Application. I direct the State Government to issue necessary direction to all the Collectors, who function as the Chairmen SSS to consider the candidature of blind candidates and other similarly placed candidates under reserved category strictly in accordance with Section 33 of the 1995 Act and the Resolution of the State Government dated 4.5.1981 (Annexure 4) if they are otherwise eligible, and re-finalise the selection lists made by them earlier. On such fresh selection lists being prepared, the candidates so selected be issued letters of engagement. It is needless to say that this Court by an interim order had earlier directed that the engagement of SSS already made would be subject to the final decision of this Writ Application. The entire exercise shall be completed within three months hence.

There shall be no order as to cost.

