

Amshad P Vs. The Administrator

Amshad P Vs. The Administrator

SooperKanoon Citation : sooperkanoon.com/63406

Court : Kerala

Decided On : Aug-06-2015

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Amshad P

Respondent : The Administrator

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON & THE HONOURABLE MR. JUSTICE SUNIL THOMAS THURSDAY, THE 6TH DAY OF AUGUST 2015 15TH SRAVANA, 1937 WP(C).No. 27470 of 2009 (S) ----- OA. NO.377/2008 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH. PETITIONER(S): ----- AMSHAD. P., AGED 20 YEARS, S/O. M.K. NALLAKOYA, PERUMBALLY ANDROTH ISLAND, UNION TERRITORY OF LAKSHADWEEP. BY ADV. SRI.P.V.MOHANAN. RESPONDENT(S): ----- 1. THE ADMINISTRATOR, UNION TERRITORY OF LAKSHADWEEP, KAVARATTI.

2. ABDUL SAMMAD T.P., THATTAMPOKKADA, ANDROTH ISLAND, UNION TERRITORY OF LAKSHADWEEP. R1 BY ADV. SRI.S.RADHAKRISHNAN. R2 BY ADVS. SRI.K.B.GANGESH, SMT.SMITHA CHATHANARAMBATH. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).No.

27470 of 2009 (S) APPENDIX PETITIONER'S EXHIBITS:- EXT.P1 COPY OF THE

ORDER

IN OA. NO.377/2008 DATED0608/2009. EXT.P2 COPY OF THE O.A. NO.377/2008. EXT.P3 COPY OF THE REPLYSTATEMENT IN OA. NO.377/2008. EXT.P4 COPY OF THE REJOINDER IN O.A. NO.377/2008. RESPONDENT'S EXHIBITS:- EXT.R2A COPY OF THE DISABILITY CERTIFICATE ISSUED TO ME BY DISTRICT MEDICAL BOARD, ERNAKULAM ON1107/2008. EXT.R2B COPY OF THE MY APPOINTMENT LETTER DATED0809/2008. //TRUE COPY// P.S.TO JUDGE rs. P.R.RAMACHANDRA MENON & SUNIL THOMAS, JJ.

----- W.P.(C). No.27470 of 2009 ----- Dated this the 6th day of August, 2015

JUDGMENT

P.R.Ramachandra Menon, J.

Whether a beneficiary under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995 ('Act', to be in short) is supposed to possess the certificate issued by the Medical Authority as envisaged under the said Act on the date of application so as to make his application in respect of posts identified under Section 32 and reserved under Section 33 of the Act valid and to be considered for the purpose of selection, is the point to be answered in this writ petition.

2. Selection to the post of L.D.Clerk reserved for the persons having physical disability in the Union Territory of Lakshadweep is the root cause of action. On issuance of Annexure- A4 notification dated 30/1/2008 in respect of the post in question, the petitioner herein, who is having 70% disability, as certified by Annexure A1 certificate dated 8/6/2007, submitted his application W.P.(C) No.27470/2009 2 well within time. Second respondent was also an applicant for the said post. He is having 50% disability as certified by the competent authority. The process of selection involved a written test. Both the parties participated in the written test, wherein the petitioner is secured a total of 58 marks out of 120 marks

(45.3%) whereas, the second respondent secured 62 marks (51.6%). Pursuant to the result of the written test, selection was finalized by the Administration on 30/6/2008, a copy of which has been produced as Ext.R1(b). An offer of appointment was given to the 2nd respondent on 2/7/2008, asking him to produce Medical certificate and such other relevant documents. It was thereafter, that Annexure R1 (e) certificate issued by the competent Medical Board on 11/7/2008 was produced by the second respondent, which was acted upon and Ext.R2(b) order of appointment was given on 8/9/2008. The selection and appointment of the 2nd respondent was sought to be challenged by the petitioner by approaching the Tribunal mainly contending that the second respondent was not duly qualified on the date of notification, to have applied for the post, for want of necessary medical certificate issued by the competent authority. The contention was turned down and the O.A. was dismissed, which made the petitioner to approach this Court by filing the writ petition raising many a W.P.(C) No.27470/2009 3 ground.

3. Heard the learned counsel appearing for the petitioner, the learned Standing Counsel for the first respondent Administrator U.T of Lakshadweep and also the learned Government Pleader for the other official respondents.

4. The learned counsel for the petitioner points out that the certificate to be produced by the aspirant has necessarily to be issued by the proper medical authority. The term 'medical authority' has been defined under Section 2(q) of the Act. It means, any hospital or institution specified for the purposes of this Act, by notification by the appropriate Government. It is contended that the second respondent had produced only a certificate issued by the Indira Gandhi Hospital, Kavattatti, who could not have been recognized as the medical authority, as envisaged under the Act, as no expert was there to assess the disability . The learned counsel further submits that, by virtue of the mandate of the Rule 6 of the relevant Rules, it is stipulated that a certificate issued under Rule 4 shall render a person eligible to apply for facilities, concessions and benefits admissible under schemes of the Government and of Non-Governmental Organizations funded by the Government, subject to such conditions as may be specified therein. W.P.(C) No.27470/2009 4 5. Rule 4 deals with the issue of disability certificate, whereas Rule 3 deals with the application for issue of disability certificate. The Rules Under

Chapter III of the Rules pertain to 'Disability Certificate' and it only deals with the situation as to how the application is to be presented, how the application is to be processed by the competent authority and what is the scope of such certificate issued by the competent authority. Completion of the procedure lastly prescribed in this regard, to the satisfaction of the authority concerned, enables the applicant to obtain a certification as envisaged under the statute so as to make him eligible to apply for the post and obtain necessary benefits. Neither the 'Act' nor the 'Rule' says anywhere that the applicant has necessarily to possess a certificate issued by the competent authority to make himself eligible for applying for the post as on the last date of the application.

6. The 'Act' itself was promulgated by the Central Government with a specific object, as discernible from the preamble. So as to give effect to the 'Act' various modalities have been prescribed making it obligatory for the Government to provide requisite extent of 'three' percent reservation as specified under Section 33 of the Act for disabled persons. There is a specific case for the Lakshadweep Administration, as pointed out W.P.(C) No.27470/2009 5 by the learned standing counsel, that the only referral hospital available in the Lakshadweep is the Indira Gandhi Co-operative Hospital, Kavaratti and admittedly, there is no facility of experts to have issued a certificate as envisaged under the Act. The certificates issued by the said referral hospital were being accepted for all purposes, till the affairs got crystallized by the end of 2007, when it was instructed to constitute a Medical Board. It is also brought on record that the Administration sought for clarification from the Central Government referring to the facts and circumstances prevailing in the Islands. It is also brought to the notice of the Court that applications submitted by the applicants concerned, with the medical certificates showing 40% disability were being accepted and proceeded further. It was, accordingly that, both petitioner as well as the second respondent were called for the written test along with other eligible candidates.

7. On coming out successful in the selection, the candidates are required to be produce certificate of the requisite nature. Accordingly, the second respondent was intimated to produce relevant certificate by the competent authority as per the offer of appointment on 2/7/2008. Thereafter, the 2nd respondent approached the

duly constituted Medical Board and obtained W.P.(C) No.27470/2009 6 Ext.R1(e) certificate dated 11/7/2008. It was after considering the same that Ext.R2(b) appointment order was issued on 8/9/2008, and not on the basis of the medical certificate produced earlier ie. issued by the Indira Gandhi Hospital. The version, as put forth from the part of the Administration, is sought to be supported by the learned counsel appearing for the 2nd respondent, pointing out that the notification issued by the Administration, in the 'Act' or the Rules did not insist that certificate issued by the Medical Board was a pre-requisite to submit the application.

8. Having heard both sides and after going through the Act & Rules and the notification, this Court does not find any impediment or hurdle, as projected from the part of the petitioner, to the effect that a certificate issued by the competent Medical Board was necessarily to be there so as to have the application submitted, to be a 'valid application' for being considered on merits. This Court does not find that the decision rendered by the Apex Court reported in Ashok Kumar Sonkar v. Union of India And Others (2007) 4 SCC54) comes to the rescue of the petitioner in any manner. This is for the obvious reason that the dictum therein is as to necessity to possess the prescribed qualifications on the 'last date of the application', holding that any qualification obtained subsequent to the last date cannot be W.P.(C) No.27470/2009 7 pressed into service. In the instant case, both the petitioner as well as the 2nd respondent possessed the requisite qualification notified by the Administration as per Ext.A4. Possession of certificate issued by the Medical Board could never be cited as an instance of 'qualification' and as such, the reliance sought to be placed on the verdict passed by the Apex Court is thoroughly wrong and misconceived.

9. The issue has been correctly approached and dealt with by the Tribunal. The order passed by the Tribunal is perfectly justified and not assailable under any circumstances. Interference is declined. The writ petition is dismissed. Sd/- P.R.RAMACHANDRA MENON Judge Sd/- SUNIL THOMAS Judge dpk