



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.5109/1011/2015

Dated:- 22.08.2016

In the matter of:

Shri Manish Gautam, *0244*
Deputy Director (Legal),
Association for the Rights of Disabled Persons,
BK2/94, Shalimar Bagh, Delhi-110088
Email - <gautamanish2011@gmail.com>

..... Complainant No. 1

Shri Hemant Kumar,
H. No. 82, Dhakka Village, *0245*
Near Old Choupal,
GTB Nagar, Delhi-110009.

..... Complainant No. 2

Versus

University of Delhi, *0246*
Through the Registrar,
Main Campus,
Delhi-110007.

..... Respondent No. 1

Miranda House, *0247*
Through the Principal,
University of Delhi,
Delhi-110007.

..... Respondent No. 2

Date of hearing : 13.07.2016, 01.08.2016

Present:-

13.07.2016

1. Sh. Manish Gautam, Advocate, Complainant alongwith Shri Shailendra Pathak, Vice President, ARDP.
2. Shri Hemant Kumar, Complainant alongwith Shri Rajan Mani, Advocate.
3. Shri B. Raja Rajan, Joint Registrar and Dr. Pardeep Kumar, Assistant Registrar, University of Delhi, on behalf of Respondent No. 1
4. Shri G.K. Pathak, Advocate on behalf of Respondent No. 2.

01.08.2016

1. Sh. Manish Gautam, Deputy Director (Legal), A.R.D.P. Advocate, Complainant.
2. Shri Hemant Kumar, Complainant alongwith Shri Rajan Mani, Advocate.
3. Dr. Pardeep Kumar, Assistant Registrar, University of Delhi, on behalf of Respondent No. 1
4. Shri R.N.Sharma, Consultant alongwith Shri G.K. Pathak, Advocate on behalf of Respondent No. 2.

ORDER

The above named complainant, Deputy Director (Legal), Association for the Rights of Disabled Persons filed a e-mail complaint dated 29.08.2015 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to the 'Act' regarding discrimination in filling the PwD reserved post of Assistant Professor.

....2/-

2. The complainant, Shri Manish Gautam in his letter dated 29.08.2015 submitted that in the advertisement/recruitment Notification, 2015 for the post of Assistant Professor in various Departments/subjects. In the said advertisement total two seats (one for VH in Computer Science and one for OH in Mathematics) were reserved for persons with disabilities. The College has been already started or finished the selection process in the month of June-July, 2015 after conducting the interview of various departments/subject except especially the reserved post of persons with disabilities. He further submitted that College is not conducting the interview of reserved post of persons with disabilities but already filled up the post of the rest of departments/subjects which is not reserved for persons with disabilities is the strong discrimination, biasedness, negligence with candidates with disabilities.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 22.09.2015.

4. In response, the Miranda House vide its letter dated 16.09.2015 had inter-alia informed the complainant that the selection panel for recommending candidates to the post of Assistant Professor is constituted by the University of Delhi. The College carried out interviews in six disciplines where the University of Delhi had sent the names of the nominee of the Vice Chancellor, three experts in the concerned subject nominated by the Vice Chancellor out of the panel of names approved by the Academic Council and an academician representing SC/ST/OBC/Minority/Women/persons with disability (PwD) categories. This panel of names is yet to be received for carrying out Selection Interviews for the Departments of Computer Science and Mathematics. The college has sent several written and telephonic reminders to the University in this regards. The complainant's conclusion that the College is deliberately not filling these posts is blatantly incorrect. The Principal, Miranda House vide her letter dated 04.11.2015 has furnished the information regarding number of vacancies filled since 01.01.1996.

5. The complainant vide his rejoinder dated 17.12.2015 has inter-alia submitted that the College in its reply dated 16.09.2015 has not provided the expected date of interview for the selection process of reserved posts and completely avoiding the deadline of 31.12.2015 as mentioned in DOP&T's O.M. dated 25.05.2015. The College has already filled or finished the selection process of unreserved posts without facing any difficulties from the University side. The complainant further vide his letter dated 01.03.2016 has inter-alia submitted that the College has completed the selection process for the post of Assistant Professor (Mathematics) after conducting interview on 21-23.02.2016 but has not selected any candidate with disability (OH) to the post in question with remarks "Not found suitable".

6. Upon considering the letters dated 19.10.2015 and 01.02.2016 of respondent no. 01, letters dated 16.09.2015 and 04.11.2015 of respondent no. 02 and complainant's e-mails dated 17.12.2015 and 01.03.2016, a hearing was scheduled on 13.07.2016.

7. During the hearing, the Ld. Counsel for the complainant no. 2, i.e. Hemant Kumar submitted that his client had filed a complaint dated 22.04.2016 in this Court on 02.05.2016 but the same was

not registered on the ground that a similar case against the same respondent is going on. He further submitted that Miranda House College of Delhi University issued advertisement dated 24.01.2015 for several teaching posts of Assistant Professor in various Departments. One vacancy in the post of Assistant Professor (Mathematics) was kept reserved for persons with disabilities OH category among a total of four vacancies (one for each category of UR, OBC, SC & ST) in the said post. The Reservation Roster maintained by Miranda House College indicates that in second cycle at point no. 34, one vacancy in the post of Assistant Professor (Mathematics) is to be reserved for PwD – OH category. A total of eight candidates of PwD-OH category for the post of Assistant Professor, Mathematics including the complainant were called for the interview on 21st, 22nd and 23rd February, 2016, in which two were from OBC and six from UR categories. The complainant, a PwD – OH from OBC category was also called for the interview for the said post on 22nd February, 2016. Three PwD – OH candidates including the complainant appeared for the interview for the post of Assistant Professor (Mathematics) during 21st-23rd February, 2016. None was selected for the said post, despite the fact that the said PwD-OH candidates possessed for the minimum required qualifications. The complainant not only meets the minimum requirement of M.Sc. Mathematics and NET, but also has substantial research work and publications for his credit. The Selection Committee of the Miranda House College did not recommend any OH disabled candidate for selection.

8 The Counsel for the complainant further submits that Miranda House College has followed incorrect and illegal procedure in making the selection for OH candidate for the post of Assistant Professor (Mathematics). This is because the Miranda House College has interviewed the respective OH candidates alongwith the other normally non-disabled candidates of their vertical category whereas the OH candidate ought to have been interviewed separately. Once the OH candidate was selected, he/she was to be placed in their appropriate vertical category i.e. SC, ST, OBC and UR. This position is found in the DOPT's O.M. dated 29.12.2005 at para No.19. Counsel for the complainant further submitted that as per the said clause, the Miranda House College ought to have interviewed the disabled OH candidates separately and after selecting one of them, should have placed such selected disabled candidate in their respective vertical category. Counsel for the complainant prays that Miranda House College be directed to select one of the disabled candidate who appeared for the interviewed for the post of Assistant Professor (Mathematics) on 22nd and 23rd February, 2016 and after such selection to place them in their respective vertical category. In the meanwhile, Counsel prays that the remaining vacancies in the post of Assistant Professor (Mathematics) be not filled pending these proceedings.

9. The Counsel appearing on behalf of the Association submitted that the submissions made by the Counsel appearing on behalf of complainant Hemant Kumar may also be treated as made by us. It is our submission that the selections which have been made out of OBC and general candidates, those may be cancelled and one candidate out of the 3 disabled candidates of disabled category who appeared for interview for the post of Assistant Professor (Mathematics) on 22nd and 23rd February, 2016, may be selected.

10. The Counsel for the respondent No.2 filed his Vakalatnama and submitted that he has not received the complete set of complaint alongwith Annexures and, therefore, a copy of the same be supplied to him. Counsel further submits that proper reply to the complainant and further submissions would be made upon receipt of the entire set of complaint. Let the copy of the complaint be supplied to the Counsel for the respondent by the Counsel for the complainant. It was further requested by the Counsel for the Respondent No.2 that at least two weeks time be given for filing the appropriate reply to the complainant.

11. Shri B. Raja Rajan, Joint Registrar and Dr. Pardeep Kumar, Assistant Registrar, University of Delhi, appearing on behalf of Respondent No. 1 submitted that the University has approved the Reservation Roster applicable for the post of Assistant Professor (Mathematics) which has been duly verified by the Nodal Officer, PwD. The College concerned has to follow the approved Roster as per the rules applicable.

12. After hearing both the parties, a copy of complaint dated 22.04.2016 of Shri Hemant Kumar has been provided to both the respondents for submitting their comments in the matter by 26.07.2016. The case will be next heard on 01.08.2016

13. During the hearing on 01.08.2016, the Counsel of the complainant No. 2, Hement Kumar submitted that he has received the reply from the respondent Miranda House College. He points out that Miranda House College in their reply acknowledged that one vacancy in the post of Assistant Professor (Mathematics) reserved for OH category is yet to be filled. However, in their reply, the Miranda House College states that they would advertise the said vacancy afresh. The Counsel for complainant opposed the submission of Miranda House College that fresh advertisement is required. He stated that the procedure followed by the Selection Committee of the Miranda House College on 21st, 22nd and 23rd February, 2016 was illegal and incorrect because the three disabled candidates including the complainant who appeared, were interviewed alongwith other normal (non disabled) candidates from their respective vertical category i.e. OBC and unreserved. The three disabled candidates ought to have been interviewed separately and selection from them be made in accordance with requirement for relaxation of standards found in clause 21 of DoP&T's O.M. dated 29.12.2005. He further submitted that as this was not done by Miranda House College Selection Committee, the correct, just and proper remedy in this case was to interview the three candidates from OH category who appeared on 21st, 22nd and 23rd February, 2016 again and make a selection from amongst these candidates. A fresh advertisement would be unfair to the three candidates who already appeared for the interview. Furthermore, the Counsel for complainant pointed out that DoP&T's O.M. No.36012/39/2014-Estt.(Res.) dated 22.05.2015 which was issued pursuant to the order of the Hon'ble Supreme Court in Contempt Petition No.499/2014 in Civil Appeal No.9096/2013 in the matter of National Federation of Blind, wherein the DoP&T had required that all the Government Departments and autonomous bodies were to complete filling of the backlog vacancies by 31st

December, 2015. He further stated that keeping the requirement of this O.M. in mind, it would be just and proper for the selection of the Assistant Professor (Mathematics) reserved for OH candidate to be made from the three candidates who appeared for interview on 21st, 22nd and 23rd February, 2016, namely Sooraj Pal Singh, Hemant Kumar and Sandeep Kumar Mogha. He also submitted that the Selection Committee which would conduct this interview be instructed by respondent Delhi University about the requirement for relaxation of standards in Clause 22 of DoP&T's O.M. dated 29.12.2005 and also about the benevolent intent and purpose for the Persons with Disabilities Act to provide disabled persons with an opportunity for employment so that they may integrate into the social main stream.

14. The Counsel appearing on behalf of A.R.D.P. submitted that the submissions made by the Counsel appearing on behalf of complainant Hemant Kumar may also be treated as made by us. He would also like to add one submission that in upcoming interview for the post of Assistant Professor (Mathematics), there should be no bias against the complainant Hemant Kumar for the reasons that he has made a complaint in this matter in this Court.

15. The counsel appearing on behalf of Miranda House College has filed the reply to the complaint and it was submitted by the Counsel for the Miranda House College that the complainant has duly participated in the interview alongwith two other candidates of PwD OH category and the Selection Committee has not recommended any of the candidate as suitable for the post. It is further submitted by the Counsel that there is no infirmity in the selection/interview process as alleged by the complainant and the process of appointment having been completed, there would not be any requirement for questioning the minutes of the Selection Committee. He further submitted that the College will re-advertise the vacant post as per Delhi University Rules and the complainant may have opportunity to participate in the interview afresh. It is strongly opposed by the Counsel for the College that only 3 candidates should be called for interview without advertisement and it would be appropriate if at all this Court so directs that all the 8 candidates who were initially called for the interview may be called for interview so as to avail the opportunity equally. It was further submitted by the Counsel for the Miranda House that it would be appropriate to call the complainant for interview without advertising and de hors the recruitment rules.

16. Dr. Pardeep Kumar, Assistant Registrar Colleges, Delhi University, appearing on behalf of Respondent No. 1, submitted that as submitted during the last hearing, the University has approved the Reservation Roster applicable for the post of Assistant Professor (Mathematics) in respect of Miranda House College and the same has been duly verified by the Nodal Officer, PwD of University of Delhi. Further this is to state that the said matter was referred to Nodal Officer, PwD, University of Delhi for his observations and comments and the Nodal Officer has stated that the College may be advised to re-advertise the vacancies for PwD at the earliest and the draft advertisement may be sent for approval to the Nodal Officer.

17. After hearing the parties and perusal of the record, it is observed that the action proposed by the respondent no. 2 i.e. Miranda House College for re-advertising the vacancies is in violation of the Government instructions. In compliance of judgment dated 08.10.2013 of Hon'ble Supreme Court of India in Civil Appeal No. 9096 of 2013 (arising out of SLP (Civil No.7541 of 2009) titled Union of India & Anr. Vs. National Federation of the Blind & Ors., the Department of Personnel & Training vide O.M. No.36012/24/2009-Estt. (Res) dated 03.12.2013 has modified para 14 of its O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 to the effect that "Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group 'A' posts or Group 'B' posts respectively, in the cadre. Department of Personnel & Training further in compliance of the direction of the Hon'ble High Court of Delhi passed on 17.07.2014 in Civil Misc. Appeal No.230/2014 vide its O.M. No.36035/4/2013-Estt.(Res.) dated 06.07.2015 has amended para 15(i) of the said O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 to the extent that "Reservation for persons with disabilities in Group "A" or Group "B" posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group "A" posts or Group "B" posts respectively in the cadre." Separate roster for Group "A" posts and Group "B" posts in the establishment shall be maintained.

18. Department of Personal & Training vide its O.M. No. 36012/39/2014-Estt. (Res) dated 25.05.2015 had issued instructions regarding special recruitment drive to fill up the vacancies for persons with disabilities and has fixed 01.02.2016 as the target date for issuing offer of appointments to the selected candidates.

19. Apart from above, para 22 of DoP&T's O.M. No. 36035/3/2004-Estt.(Res) dated 29.12.2005 regarding relaxation of standard of suitability provides that if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them. Further para 23 of the said OM provides that as per Rule 10 of the Fundamental Rules, every new entrant to Government Service on initial appointment is required to produce a medical certificate of fitness issued by a competent authority. In case of medical examination of a person with disability for appointment to a post identified as suitable to be held by a person suffering from a particular kind of disability, the concerned Medical Officer or Board shall be informed beforehand that the post is identified suitable to be held by persons with disability of the relevant category and the candidate shall then be examined medically keeping this fact in view.

20. The case is disposed off with the direction to the respondent to conduct the interview of 03 candidates with disabilities (instead of 08 candidates shortlisted for interview as 05 were remained absent on the days of interviews) who appeared for interview on earlier dates i.e. on 21st, 22nd and 23rd February, 2016. The interview will be conducted by the same constitution of Committee through which the interview was conducted in February, 2016. The Selection Committee should also be apprised of the DoP&T's instructions while considering the candidate with disability for the filling up the post of Assistant Professor (Mathematics).

21. The exercise will be completed within 75 days from the date of decision of the Court and a compliance report with the names of the selected candidate with nature and percentage of disability should be submitted to this Court within 15 days after joining of the candidate.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities

N.O.O.

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