

Court No. - 8

Case :- WRIT - A No. - 12733 of 2021

Petitioner :- Poonam Muktaawat

Respondent :- State Of U.P. Thru. Prin.Secy. Higher Education And Ors.

Counsel for Petitioner :- Lalendra Pratap Singh

Counsel for Respondent :- C.S.C.,Ashok Shukla,Ravi Shanker Tewari

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Lalendra Pratap Singh, learned counsel for the petitioner, Mr. Ravi Shanker Tewari, learned counsel for the respondent no.2, U.P. Public Service Commission, as well as Mr. Tushar Verma, learned Additional Chief Standing Counsel for the respondents-State Authorities.

2. This writ petition under Article 226 of the Constitution of India has been filed, seeking quashing of the final select list dated 25.03.2021 published by the U.P. Public Service Commission, Prayagraj for selection on the post of Lecturer (Home Science) in Government Degree Colleges on the ground that the petitioner, who has locomoter disability, has not been included in the final select list though physically handicapped candidates, having disability of blindness and low vision, deaf and hard of hearing, were not available and, therefore, the vacancy for physically handicapped should have gone to the petitioner, who was otherwise successful in the selection process.

3. Learned counsel for the petitioner has submitted that the earlier provision of the Uttar Pradesh Services (Reservation for Physically Handicapped, Dependants of Freedom Fighters and Ex-Servicemen) Act, 1993 (for short "Act, 1993"), which provided for carrying forward the vacancies, if a particular category candidate, was not available, in view of the order passed in Writ Petition No.49778 of 2015 (Alok Kumar Singh and others Vs. State of U.P. and others), the petitioner ought to have been offered the appointment against the post reserved for physically handicapped candidate in absence of the candidate suffering from visual impairment.

4. On the other hand, learned counsel for the respondents have jointly submitted that after the order passed in the case of *Alok Kumar Singh and others Vs. State of U.P. and others* (supra), the Act, 1993 came to be amended, and the provisions of the Rights of Persons with Disabilities Act, 2016 (for short "Act, 2016") have been adopted. It is further submitted that provision of Section 34 of the Act, 2016 provides reservation for persons with benchmark disability, which reads as under:-

" 34. (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts

meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to nonavailability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

5. From bare reading of provision of Section 34 of the Act, 2016, it is evident that if in any recruitment year any vacancy cannot be filled up due to nonavailability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability

available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

6. In view of the aforesaid express provision of the Act, 2016 and the Act, 1993, as amended in the year 2018, the petitioner cannot be offered the post which was reserved for benchmark disability i.e. visual handicapped. However, If in the succeeding recruitment year, no person is available then the petitioner will have a right to participate in the recruitment process and succeed. I find no substance in this writ petition, which is hereby **dismissed**, provided that if in the succeeding recruitment year candidate with benchmark disability is not available then the said post should be offered to the person with other benchmark disability, as provided under the Act, 2016.

[D.K. SINGH, J.]

Order Date :- 5.7.2023

MVS/-