

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE T.MATHIVANAN

W.P.No.22047 of 2014
and
M.P.No.1 of 2014

1. Union of India,
Union Public Service Commission,
rep.by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
2. The Joint Secretary (Recruitment),
10, Dholpur House,
Shahjahan Road,
New Delhi-110 001

...Petitioners

vs.

1. R.Venkatesan
2. Union of India,
rep.by the Registrar,
O/o.Trade Marks, Boudhik Sampada
Bhavan, First Floor, S.M.Road,
Antop Hill, Mumbai-400 307
3. The Registrar,
Central Administrative Tribunal,
City Civil Court Building,
Chennai-600 104

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the 3rd respondent Tribunal culminating the impugned order, dated 20.12.2013, in O.A.No.1082 of 2012 and Misc. Application No.492 of 2013 and to quash the same.

For Petitioners : Mr.R.Priyakumar
For Respondents : Mr.N.G.R.Prasad
for M/s.Row and Reddy for R1
Mr.V.T.Balaji, C.G.S.C., for R2
R3 - Tribunal

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The writ petition is filed by the Union Public Service Commission, challenging an order passed by the Central Administrative Tribunal, granting relief to the first respondent herein, by directing the writ petitioner to declare the results of the selection conducted by them for direct recruitment to the post of Senior Examiner of Trade Marks.

2. Heard Mr.R.Priyakumar, the learned Standing Counsel for the Union Public Service Commission, Mr.N.G.R.Prasad, the learned counsel appearing for the first respondent and Mr.V.T.Balaji, the Central Government Standing Counsel for the second respondent.

3. On 14.1.2012, the Union Public Service Commission issued an advertisement in newspapers, bearing Advertisement No.01/12, inviting applications for various categories of posts, in various departments of the Central Government. In Serial No.4 of the said Advertisement, the post of Senior Examiner of Trade Marks was included. Six vacancies in the post of Senior Examiner of Trade Marks were notified. Five out of them were unreserved and one vacancy was for Other Backward Classes.

4. Paragraph No.4 of the Annexure to the Notification indicated the reservation for persons with disabilities. It will be useful to extract paragraph No.4 of the Annexure to the Advertisement. It reads as follows:

"4. (Vacancy No.12010104214) Six posts of Senior Examiner of Trade Marks and Geographical Indications in the Trade Marks Registry under the Office of the Controller General of Patents, Designs and Trade Marks, Department of Industrial Policy & Policy & Promotion, Ministry of Commerce & Industry. Of the six posts, three posts are temporary and remaining three posts are permanent.

Of the six posts, one temporary post is reserved for Other Backward Classes candidates and remaining five (three permanent and two temporary) posts are Unreserved. Of the six posts, one post is reserved for Physically Challenged Persons with disability viz., Orthopaedically Handicapped/Locomotor Disability/Cerebral Palsy with One Arm Affected (OA) or One Leg Affected (OL). QUALIFICATIONS: ESSENTIAL: A.EDUCATIONAL Degree in Law of a recognized University. B.EXPERIENCE: Three years' experience in handling Court cases and other legal matters or matters relating to Trade Marks or Geographical Indications. DESIRABLE: Master's degree in Intellectual Property from a recognized University. DUTIES: To oversee examined applications for registration of Trade Marks under the superintendence and direction of the Registrar as per the provisions of Trade Marks Act, 1999 and rules framed thereunder. To hear Show Cause Matters and authorized to accept trade marks applications for registration. Any other work relating to the subject assigned by the Registrar."

5. It appears that the first respondent herein, who was already working as Examiner of Trade Marks and who was entrusted with Supervisory duties and who was also sent, at the cost of the Government, to the Japan Patent Office for receiving WIPO Training, applied for the post of Senior Examiner. But his application was not received online, on account of the fact that his physical condition, as reflected in the medical certificate produced by him, was not accepted by the system as satisfying the criteria laid down in the software. Therefore, the first respondent was compelled to submit a representation on 13.2.2012 directly to the Joint Secretary of Union Public Service Commission, pointing out that there was a discrepancy in the manner in which physical disability was defined in the Notification. But the representation did not evoke any response.

6. Therefore, the first respondent approached the Central Administrative Tribunal along with another person and filed O.A.Nos.1082 of 2012. The other person filed an application in O.A.No.1081 of 2012. In both the applications, the Tribunal passed interim orders directing the Public Service Commission to process the applications. Accordingly, the petitioner's application was processed. However, the results were not declared due to the pendency

of the Original application.

7. In the meantime, the Public Service Commission filed a reply to the main Original Application, contending inter alia that 224 effective applications were received in response to the advertisement; that after adopting the short-listing criteria prescribed in the advertisement, 56 candidates were short-listed for interview scheduled to be held from 17 to 20 September 2012. The petitioner/Union Public Service Commission took a stand before the Tribunal that out of six posts, for which advertisement was issued, one was reserved for persons with disability, namely, orthopaedically handicapped/locomotor disability/cerebral palsy with One Arm Affected (OA) or One Leg Affected (OL). In the disability certificate produced by the first respondent, it was stated that the first respondent was affected by "birth Palsy - both upper limbs" and that he is physically handicapped with 85% permanent physical impairment.

8. The stand taken by the petitioner/UPSC was that as per the provisions of the Act and as per the advertisement issued for selection, only a person who had locomotor disability, on account of 'Cerebral Palsy' was entitled to claim the benefit of reservation and that a person who had a disability on account of 'birth palsy' is not entitled to the benefit. However, the said contention was rejected by the Tribunal and the Tribunal directed the results of the interview to be declared. The Tribunal also noted that the Central Government, represented by the Registrar of Trade Marks, had actually recommended the first respondent for appointment and that a person, who was considered to be eligible for the benefit of reservation for the post of Examiner, cannot be considered ineligible for the next higher post of Senior Examiner. Therefore, the Tribunal allowed the application directing the Union Public Service Commission to declare the results.

9. It is contended by Mr.R.Priyakumar, the learned counsel for the UPSC that the Tribunal committed a mistake in not reading the Act as well as the advertisement in the proper perspective. According to the learned counsel, the purpose of reservation under The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as 'the Act') has to be understood in the context of the definitions contained therein and that therefore, the Tribunal cannot go beyond the terms of the advertisement, which merely followed a Notification issued by the Central Government, on the basis of the Act.

10. We have carefully considered the said submission. It is to be pointed out that the benefit of reservation of 3% of the

vacancies contemplated under Section 33 of the 1995 Act, is applicable to 'persons with disability'. The expression 'person with disability' is defined in Section 2(t) to mean a person suffering from not less than forty per cent of any disability, as certified by a medical authority. Again the expression 'disability' is defined in Section 2(i) to mean several things such as blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation, mental illness.

11. The expression, 'locomotor disability' is defined to mean disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy under Section 2(o). The expression 'cerebral palsy' is defined in Section 2(e) to mean a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development.

12. The problem with the Notification and with the petitioner is that the certificate produced by the first respondent does not use the expression 'cerebral palsy', but uses the expression 'birth palsy'. Unfortunately, the first respondent cannot be blamed for the lack of appropriate expression by a medical professional while issuing a certificate. There is no such term as 'birth palsy'. In 'cerebral palsy', occurring in the pre-natal, peri-natal or infant period of development is included within the definition of Section 2(e). In other words, the definition takes care of both pre-delivery and post-delivery conditions. The medical certificate very clearly states that the first respondent is physically handicapped and has 85% disability, which is permanent. The medical certificate also declares that he is entitled for all allowances in respect of disability exceeding 40%. It is on the basis of the very same certificate that the benefit of reservation under the very same Act was extended to the lower post. The Act does not discriminate between a lower post and a higher post. Therefore, when the benefit of reservation under the Act has been extended to one post and when the Central Government/appointing authority is not aggrieved by the claim of the first respondent for the benefit of reservation, it is not open to the Public Service Commission to object to the extension of the benefit to the first respondent.

13. Admittedly, the first respondent does not have both the hands. If the benefit can be extended to persons who do not have one hand or one leg, we fail to understand as to how a person, who does not have two hands, will not be entitled to the benefit of reservation under the Act.

14. Therefore, in the result, we find no justification to interfere with the order of the Tribunal at all. Accordingly, the writ petition is dismissed. The Union Public Service Commission shall declare the results within a period of two weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Registrar,
Union of India,
O/o.Trade Marks, Boudhik Sampada
Bhavan, First Floor, S.M.Road,
Antop Hill, Mumbai-400 307
2. The Registrar,
Central Administrative Tribunal,
City Civil Court Building,
Chennai-600 104
3. The Secretary,
The Union Public Service Commission,
Union of India,
Dholpur House, Shajahan Road,
New Delhi.

1CC to Mr.V.T. Balaji, Advocate, SR 29201

1CC to M/s.R.Priya Kumar, Advocate, SR 29124

W.P.No.22047 of 2014

MV [CO]
PSI 17.06.2015

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