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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 8667/2010

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21st January , 2015

JAGESH CHANDRA MISHRA

.....Petitioner

Through: Mr. Anurag Singh, Advocate.

VERSUS

CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES & ORS.

..... Respondents

Through: Mr. Pawan Kumar Aggarwal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner states that petitioner is not contacting him, and therefore, he has no instructions for arguing the case. Learned counsel for the respondent states that in view of the fact that the pleadings are complete to the extent that counter-affidavits have been filed to the writ petition, the writ petition be decided on merits. In my opinion, the contention of the counsel for the respondent is correct and since the facts which are required to decide the case on merits exist on record, I am proceeding to decide the writ petition.

2. A reading of the writ petition shows that petitioner seeks appointment to the post of Scientific Assistant with the respondent no.3/Hansraj College on the basis of the selection process which was commenced pursuant to the advertisement dated 4.10.2008. The case of the petitioner is that he is entitled to the appointment because the petitioner is a physically challenged candidate, and being the only physically challenged candidate, he was bound to be given appointment pursuant to the impugned advertisement for the post of Scientific Assistant. Let us examine this contention as raised by the petitioner.

3. A reading of the impugned advertisement shows that four posts were advertised and, out of which three posts were the general posts and the fourth post was reserved for OBC candidate. Clearly therefore by the impugned advertisement no post was reserved for a physically challenged candidate, and taking that the respondent no.3 had violated the roster point system of appointment which required the first post to go to a physically challenged candidate, the remedy of the petitioner should have been to seek quashing of the impugned advertisement at the relevant time in the year 2008 and to seek an advertisement/selection process as per the roster point system and consequent appointment to the respondent no.3-college in terms

of the roster point system as per which the first post was to be reserved for the physically challenged candidate and which has not been done. The petitioner in fact participated in the selection process as per the subject advertisement, was unsuccessful, and therefore he cannot question that very advertisement on the ground that by the advertisement one post should have been reserved for a physically challenged candidate such as the petitioner. Relief sought of appointment is not available to the petitioner once the respondent no.3 has acted in terms of the impugned advertisement and the petitioner unsuccessfully participated in the selection process.

4. I may note that the petitioner had approached the Court of Chief Commissioner for Persons with Disabilities and who has passed the order dated 17.8.2010 noting that the petitioner will be considered now for subsequent vacancies and the respondent no.3-college will now apply roster point system, and which order of the Chief Commissioner is also challenged in the present case, however as stated above, once the petitioner participated in the selection process in terms of the advertisement and which did not reserve any post for a physically challenged candidate, petitioner cannot claim that automatically in the advertisement there should be a reserved post

for a physically challenged candidate merely because the roster point system of the respondent no.3-college requires such a reservation.

5. As already stated above, if such a reservation was required the issue was of challenging the advertisement at the relevant stage by requiring the filling up of posts by seeking that one post being reserved as per the roster point system for physically challenged candidate, and which admittedly was not done by the petitioner.

6. Dismissed.

JANUARY 21, 2015
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VALMIKI J. MEHTA, J.