

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.4060/2014**

% **22nd February, 2017**

HIMANSHI ANAND Petitioner

Through: Mr. Vikas Mahajan, Advocate
with Mr. S.S.Rai, Advocate.

versus

UNIVERSITY OF DELHI Respondent

Through: Mr.Santosh Kumar, Advocate
with Mr. Abhinav Sharma,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, though the petitioner had sought two reliefs, today counsel for the petitioner confines the relief prayed only to prayer (b) of the writ petition and which is for direction to the respondent/University of Delhi to reserve posts for Persons with Disabilities (PWD) for recruitment for the posts of Junior Assistants to be done in terms of advertisement dated 6.11.2013. Petitioner is an Orthopedically Handicapped (OH) person and he pleads that since recruitment did not

take place by first reserving posts for PWD candidates, hence the entire recruitment process has to fail.

2. Counsel for the respondent argues that this writ petition is liable to be dismissed by applying the principle of estoppel against the petitioner because petitioner participated in the subject selection process under the subject advertisement dated 6.11.2013 in the general category for the post of Junior Assistant with the respondent but petitioner was not successful, and therefore, having participated in the selection process as a general category candidate and failing to secure appointment in that process, petitioner now cannot be allowed to turn around and question the selection process on the ground that there was no reservation of posts under the PWD category. The principle of estoppel is argued against the petitioner more so because from 1996 till the year 2013 when the subject advertisement was issued, it is pleaded that a total of nine persons have been adjusted against the reserved posts under the PWD category under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'PWD Act') and hence there was no requirement of reserving posts for PWD candidates and which posts were already filled up as per the roster point system when the subject advertisement was issued for general posts on 6.11.2013. The relevant

paras in his regard of the short counter affidavit of the respondent are paras 3 to 6, and which paras read as under:-

“3. It is respectfully submitted that the petitioner applied as a general category candidate, participated in the appointment process started by advertisement dated 6.11.2013 and failed. Thus she accepted the terms of the advertisement and voluntarily made the application as a general category candidate. It is settled law that a candidate after participating in the appointment process can not challenge the very same appointment process and its terms.

4. Further the appointment process started by the advertisement dated 6.11.2013 is already complete and the selected candidates have joined. The petitioner cannot seek quashing of the appointment process started by the advertisement dated 6.11.2013 without impleading these people whose rights will be affected and thus present petition is not maintainable.

5. The present petition is also liable to be dismissed for delay and laches.

6. On the date of issuing the advertisement (6th November, 2013) for 259 Group-C vacancies on various posts, including 255 vacancies on the post of JACT, there were as many as 20 persons with disabilities who were appointed on various Group-C posts between 1.1.1996 and 6.11.2013. These 20 PWDs were appointed on various Group-C vacancies out of a total number of 174 vacancies which were filled during the above-mentioned period. As the mandate of Section 33 of the PWD Act is to provide 3% reservation for persons with disabilities, the number of PwDs appointed between 1.1.1996 and 6.11.2013 far exceeded this 3%. Even if the 259 vacancies on various Group-C posts advertised vide advertisement dated 6.11.2013 were to be counted the total number would come to 433 which would require the appointment of 13 persons with disabilities against which 20 PWDs had already been appointed. Thus as there was a surplus of Persons with Disabilities in Group-C, no reservation for this category on 255 vacancies of JACT could be provided. Therefore the writ petition has no merit and is liable to be dismissed.” (underlining added)

3. The respondent has also thereafter furnished further details in terms of order dated 20.5.2015 passed by this Court, and which arises on account of adjustment by the respondent of persons in the PWD posts, and which persons were either given compassionate

appointments or were regularized from their appointments as *ad hoc* appointments or daily/casual workers. It is seen that before the recruitment under the subject advertisement nine appointments have been made by the respondent with respect to reserved category posts under the PWD category and the same are as under:-

Sr. No.	Name of the employee	Designation	Date of appointment	Category	Mode of appointment
1.	Sh. Ramesh Chander	Office Attendant	19.08.1998	OH	Engaged on Daily Wage bases then regularized
2.	Sh. Mahesh Kumar	Office Attendant	16.05.2007	OH	Engaged on Daily Wage bases then regularized
3.	Sh. Dal Chand	Farash	24.08.2005	OH	Engaged on compassionate ground on daily wage basis and regularized
4.	Sh. Jagmohan	Office Attendant	16.05.2007	OH	Engaged on compassionate ground on daily wage basis and regularized
5.	Sh. N. Raghunandeshwar	Office Attendant	17.07.2008	OH	Engaged on compassionate ground on daily wage basis and regularized
6.	Sh. Prabhakar Kumar	Library Attendant	14.01.2010	OH	Appointed through advertisement
7.	Sh. Chander Mohan	Laboratory Attendant	16.12.2010	OH	Appointed through advertisement
8.	Sh.V.P. Shukla	Laboratory Attendant	21.12.2010	OH	Appointed through advertisement
9.	Sh. Somanna	Mali	01.03.2000	OH	Engaged on daily wage basis & regularized

4. (i) It is not disputed on behalf of the petitioner that petitioner had participated in the subject selection process, however, counsel for

the petitioner pleads that petitioner is not estopped from filing of the writ petition. It is argued that respondent as per the requirement of 1% (total of 3% reservation under the PWD category of which sub-category of 1% is for OH persons and thus out of 26 appointments required to be made to PWD category, four were thus to be in the OH category) reservation of posts for the Orthopedically Handicapped (OH) persons, had to appoint four persons in this OH category, but admittedly only three persons have been appointed by the respondent by the direct recruitment process from the OH category with the rest six persons having been adjusted by compassionate/*ad hoc*/regularization of daily wage workers against PWD posts although they were not appointed by the direct recruitment method. This procedure of not appointing of the fourth person by the direct recruitment is argued to be violative of para 2(i) of the O.M. dated 29.12.2005 of the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, and which para reads as under:-

“2. QUANTUM OF RESERVATION

- (i) Three percent of the vacancies in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability;”

(ii) Reliance is also placed upon paras 7 and 19 of this O.M., and which paras read as under:-

“7. ADJUSTMENT OF CANDIDATES SELECTED ON THEIR OWN MERIT: Persons with disabilities selected on their own merit without relaxed standards alongwith other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, be relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible.

19. HORIZONTALITY OF RESERVATION FOR PERSONS WITH DISABILITIES: Reservation for backward classes of citizens (SCs, STs and OBC) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/ST/OBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs. To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.”

5. I cannot agree with the arguments urged on behalf of the petitioner because petitioner after participating in the selection process as a general category candidate, and being unsuccessful in the same, thereafter cannot turn around and seek quashing of the entire selection process. There is a catena of judgments of the Supreme Court that if a

person has participated in the selection process, thereafter such a person cannot question the selection process. One such judgment of the Supreme Court is in the case of ***Manish Kumar Shahi Vs. State of Bihar and Ors. (2010) 12 SCC 576.***

6. I may note that the challenge to the recruitment process by an unsuccessful candidate after participating may be on various grounds and one such ground in the case of ***Manish Kumar Shahi (supra)*** was challenging the viva-voce marks. Another challenge can be to the recruitment process on the ground that there was no reservation of PWD category posts, and which is the case of the petitioner in the present writ petition.

7. Indubitably there were a total of 399 posts from the years 1996 to 2013 and when 1% vacancies are taken in the OH category candidates, then admittedly as per both the parties, a total of four persons had to be appointed in the OH category. Three persons have been appointed by direct recruitment process and which is not a matter of dispute. The dispute is only with regard to fourth vacancy which has been filled in on account of the compassionate appointment or by appointment from persons who were on *ad hoc* basis with the respondent or were working in daily wages capacity.

8. In my opinion, in the facts of the present case, petitioner is estopped because petitioner participated in the selection process. If the petitioner before participating in the selection process which has concluded would have objected to non-reservation of the fourth post by direct recruitment, and therefore, pleading disentitlement of the respondent to regularize a total of nine persons to the PWD category including the four in the OH category, then, petitioner may possibly have had a case, however, it is noted that the respondent has both in letter and spirit complied with the 1% reservation in OH category required in terms of the PWD Act and the only grievance of the petitioner is that the fourth appointment in the OH category is not as per the regular recruitment process, but, by wrongly adjusting the fourth person who has come in not by direct recruitment but by adjustment made of OH candidates and who were either already *ad hoc* appointees or casual workers with the respondent or compassionate appointments made by the respondent. Effectively therefore it is seen that only the mode of recruitment is being challenged, and not the spirit of the provision which requires 1% reservation and which was admittedly complied with by the respondent. I therefore do not find that the petitioner is entitled to question the selection process by now seeking reservation of the fourth post also by direct recruitment, once

petitioner is unsuccessful in the recruitment process after participating in the same.

9. Learned counsel for the petitioner relies upon a judgment of this Court in the case of ***Ranveer Singh Rajpoot Vs. Govt of NCT of Delhi & Ors. (2009) 165 DLT 558*** to argue that petitioner is not estopped, however, it is seen that the judgment which is relied upon does not lay down any ratio and in fact the judgment is an order of this Court without discussing the ratio as regards the law of estoppel. In any case, the facts of the case in the case of ***Ranveer Singh Rajpoot (supra)*** were different because there were no facts in the said case of persons not having already appointed and posts already filled up in the OH category, whereas in the present case all the posts in the OH category stand duly filled up with only the fourth post being argued as not being filled up as per the appropriate recruitment process. Since in the case of ***Ranveer Singh Rajpoot (supra)*** the vacancies existed without actually the same having been filled up as per the required reservation category posts under the PWD Act, hence in the case of ***Ranveer Singh Rajpoot (supra)*** directions were given for appointment of the persons to the reserved category PWD posts whereas in the present case the OH category posts are already filled up. Therefore,

the petitioner cannot take any benefit of the judgment in the case of ***Ranveer Singh Rajpoot (supra)***.

10. In view of the above, the petitioner is estopped from filing of the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 22, 2017

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VALMIKI J. MEHTA, J

