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

Date of decision: 26th September, 2018

+ W.P.(C) 6897/2018

YASMEEN MANSUREE Petitioner
Through: Mr.Govind Jee, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr.Vinod Diwakar, CGSC for R-1
Mr.V.S.R. Krishna and Mr.V. Shashank
Kumar, Advs. for AIIMS

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT (ORAL)

1. The petitioner-Ms.Yasmeen Mansuree is an acid attack victim, having suffered the attack in 2004. To her credit, however, even after suffering such a trauma, she obtained her diploma in General Nursing and Midwifery from the Ruffaida College of Nursing, Jamia Hamdard University in 2014 and has worked as a Nurse in different hospitals in Delhi for around three and a half years as on date. She is stated to be presently working in the Janakpuri Super Speciality Hospital, New Delhi.

2. The impetus for filing the present writ petition is an advertisement, dated 13th June, 2018, issued by the All India Institute of Medical Sciences (hereinafter referred to as "AIIMS"), inviting applications, online, for filling up various Group-D posts in its establishment. Amongst the posts was that of Nursing Officer, to

which the petitioner aspires. Insofar as the candidature of candidates, suffering from physical handicaps, to the said post, is concerned, the advertisement contained a footnote, proceeded by two asterisks, which reads thus:

“** New PH category will be considered as per guideline received from Ministry of Social Justice & Welfare under Right of Persons with Disabilities Act, 2016.”

3. The grievance of the petitioner is that, while the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as “the RPD Act”) includes, in the categories of disabilities enumerated in Section 34 of the said Act, acid attack victims (in Clause-C), the impugned advertisement, dated 13th June, 2018, does not do so. The only category of disability, for which the post of Nursing Officer was identified suitable, in the advertisement, was “OL (one leg only)”. His submission is that this specification infracts Section 34 of the RPD Act. For ready reference, Section 34 of the RPD Act is reproduced 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.”

4. The last date of submission of the application, pursuant to the advertisement, was 12th July, 2018.

5. The petitioner represented, regarding the non inclusion of acid attack victims, among the categories of candidates suffering from disability, who could apply in response to the impugned advertisement, dated 13th June, 2018, to the Chief Commissioner for Persons with Disabilities, but to no avail.

6. It is in these circumstances that the petitioner has moved this Court, by means of the present writ petition, drawing the attention of this Court to what she perceives to be an unfair transgression of the provisions of Section 34 of the RPD Act, in not including acid attack victims amongst the categories of persons, with disabilities, who could apply in response to the impugned advertisement. The prayers in the writ petition, consequently, read thus:

“i. Declaring the eligibility conditions of the advertisement no. 01/2018 for the post of Nursing Officer (Group B) dated 13.06.2018 issued by the Respondents 2 & 3 (the All India Institute of Medical Sciences), to the extent of it being not in tune with Section 33 & Section 34 of the Right of Persons with Disabilities Act, 2016, providing reservations in government services for person with benchmark (disability to an extent of 4 percent horizontal seats, is unreasonable and arbitrary and hence violative of Article 14, Article 19(1) (g) and Article 21 of the Constitution of India;

ii. To Quash the decision (if any) of the Respondents in identifying the post of Nursing Officer (B) in terms of the advertisement no. 01/2018; dated 13.06.2018 suitable for disabled category of one leg only and to the exclusion of victims of acid attack;

iii. Directing the Respondent No. 1 to ensure that the persons with benchmarks disability, in particular the acid attack victims are not discriminated in public appointments and reservation on such posts be made strictly in terms of the

provisions of the Right of Persons with Disabilities Act, 2016; and/or.

iv. Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.”

7. Mr. Govind Jee, learned counsel for the petitioner, emphasises the fact that the Supreme Court has, in various judicial orders, mandated implicit compliance, by the government, with the provisions of the RPD Act. The said directions, in his submission, stand violated by the act of AIIMS in not permitting acid attack victims to apply pursuant to the impugned advertisement.

8. The counter affidavit, filed by the AIIMS, in response to the writ petition, places reliance on Notification, dated 29th July, 2013, issued under Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (the predecessor statute to the RPD Act and referred to, hereinafter, as “the PWD Act”). Section 32 of the PWD Act may, for ready reference, be reproduced thus:

“32. Identification of posts which can be reserved for persons with disabilities. -Appropriate Governments shall-

(a) identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.”

9. The aforesaid notification, dated 29th July, 2013, issued by the Department of Disability Affairs, Ministry of Social Justice and Empowerment, states that, in accordance with Section 32 of the PWD Act, an expert committee had been constituted, on 30th December, 2010, under the chairmanship of the Additional Secretary, Ministry of Social Justice and Empowerment, which met on 14th February, 2012, and set up separate sub-committees to examine the three categories of disabilities which alone, at that time stood included in the PWD Act, and to provide reservation therefor, i.e. locomotor impairment, hearing impairment and visual impairment. Consequent to the studies carried out by the said committee, the Notification identifies the categories of disability, persons possessing which could be treated as suitable for manning various posts. Against the posts of Assistant Nursing Superintendant, Nursing Superintendant, Senior Nursing Brother, Senior Nursing Sister, Senior Nursing Superintendant, and Nursing Officer, the notification identifies only persons suffering from “one leg” disability, i.e. “OL” disability, as eligible for being appointed.

10. It is undoubtedly true that the aforesaid Notification, dated 29th July, 2013, was issued during the regime of the PWD Act, when acid attack victims were not a category of disability recognised under the statute as entitled to preferential reservation. However, it is equally true that, after the promulgation of the RPD Act in 2016, no notification, identifying categories of disabilities, *vis-a-vis* posts, has been issued, though a provision parallel to Section 32 of the PWD Act, is also to be found in Section 33 of the RPD, Act which read thus:

“33. The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.”

11. The case of the AIIMS, in its counter affidavit, is that, in the absence of any notification issued under Section 33 of the RPD Act, it is bound by the Notification dated 29th July, 2013 (*supra*), issued under Section 32 of the PWD Act. Insofar as the said Notification identifies only “OL” as the category of disability, the persons possessing which would be suitable for being considered for the post of Nursing Officer, the AIIMS would contend that it could not, possibly, include any other category of disability in its advertisement.

12. Mr. Govind Jee draws my attention to Note-22 below para 5 of the notification dated 29th July, 2013 (*supra*), which reads thus:

“Note 2: The list of posts being notified is not an exhaustive list. The Ministries, Departments, Public Sector Undertakings and the autonomous bodies may further supplement the list.”

13. Note 2 extracted hereinabove, I am afraid, cannot come to the assistance of the petitioner, as the said note only empowers autonomous bodies to supplement the list of posts being notified. There is no provision which can enable autonomous bodies, such as

the AIIMS, to include disabilities, in addition to those notified by the Central Government, for appointment of persons to the posts already notified. In other words, once the Notification dated 29th July, 2013 had notified only “OL” as the category of disability, persons possessing which could be considered for appointment as Nursing Officer, the stands of the AIIMS, that it could not include, in its advertisement, any other category of disability, has substance.

14. At the same time, it cannot be forgotten that the inclusion, of additional categories of disabilities, in the RPD Act, over and above those categories which figured in the PWD Act, was intended to extend the penumbra of reservation persons suffering from other disabilities, which was fundamentally a measure aimed at social justice. The said measure, has, naturally, to be given its full sweep and significance. Any attempt to adopt a blinkered view, while interpreting or applying the provision of the RPD Act, would do complete violence to the ethos of that statute.

15. Inasmuch as the post involved is one of Nursing Officer, which would involve interaction with patients and is *ex facie*, sensitive in nature, it is not possible for this Court to issue a mandamus, at this stage, to appoint the petitioner as Nursing Officer, when acid attack victims have, as yet, not been included in the categories of disabilities which would enable consideration and appointment to the said post.

16. In the above factual situation, and keeping the philosophy of the RPD Act in mind, I am of the view that the interests of justice would

be best met if the present writ petition is disposed of with the following directions:

- (i) Respondent No. 1 is directed to take a final decision on whether acid attack victims would, or would not, be eligible to be considered for appointment against the post of Nursing Officers, in the context of the Rights of Persons with Disabilities Act, 2016, within a period of four weeks and issue an appropriate notification, in that regard, on or before 31st October, 2018.
- (ii) In case acid attack is found to be a category of disability which enables victims thereof to be considered and appointed as Nursing Officers, the case of the petitioner would be examined in the light of the said decision.
- (iii) In that event, if the petitioner is found otherwise suitable for being appointed to the post on merit, she would be appointed as Nursing Officer in the AIIMS, if necessary by creating a supernumerary post for the said purpose.

17. The AIIMS is directed to take a final decision regarding the case of the petitioner within three weeks of the issuance of Notification by the Central Government as directed hereinabove.

18. Needless to say, should the petitioner continue to remain aggrieved on any count, either because of non-inclusion of acid attack as a category of disability in the notification to be issued by the Central Government, or against her non-appointment as Nursing

Officer, she would be at liberty to agitate her grievances by seeking appropriate remedies in accordance with law.

19. The writ petition stands disposed of, in terms of the above directions.

20. There shall be no orders as to costs.

21. *Dasti.*

C.HARI SHANKAR, J.

SEPTEMBER 26, 2018

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